



Appeal Decision

Site visit made on 25 January 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31ST JANUARY 2024

Appeal A: APP/Z4718/C/23/3322719

Appeal B: APP/Z4718/C/23/3322720

Land at property at Primrose Lane, Mirfield WF14 0DN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr David Darnbrooke Thorpe and Appeal B is made by Mrs Barbara Davis against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 12 April 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of the site to storage (including but not limited to, shipping containers, wooden pallets, processed logs, plastic containers, water pipes, building materials and lorry backs) alongside the erection of a metal clad building, engineering operations to raise land levels and installation of a retaining wall to facilitate the storage use.
 - The requirements of the notice are a) cease the use of the land for storage; b) remove from the land all stored items including but not limited to shipping containers, wooden pallets, processed logs, plastic containers, water pipes, building materials and lorry backs; c) dismantle and remove the building, including any foundations/base and remove any resulting materials; d) dismantle and remove the retaining wall; and e) return the land to its condition prior to the development taking place.
 - The period for compliance with the requirements is 60 days.
 - Appeals A and B are proceeding on the grounds set out in section 174(2) (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decisions

Appeal A: APP/Z4718/C/23/3322719

1. It is directed that the enforcement notice be varied by deleting the words '*Land and property at Primrose Lane, Mirfield, WF14 0DN*' in section 2 and replacing them with '*Land and property at Primrose Lane, Mirfield, WF14 0DN shown edged red on the plan attached to the notice*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/Z4718/C/23/3322720

2. It is directed that the enforcement notice be varied by deleting the words '*Land and property at Primrose Lane, Mirfield, WF14 0DN*' in section 2 and replacing them with '*Land and property at Primrose Lane, Mirfield, WF14 0DN shown edged red on the plan attached to the notice*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. Section 2 of the notice refers to the land to which the notice relates and states '*land and property at Primrose Lane, Mirfield, WF14 0DN*'. It is clear from the evidence of the main parties that this land relates to that shown edged red on the plan attached to the notice. In the interests of precision, and without causing injustice to any of the main parties, I shall vary the notice by deleting the words '*Land and property at Primrose Lane, Mirfield, WF14 0DN*' in section 2 and replacing them with '*Land and property at Primrose Lane, Mirfield, WF14 0DN shown edged red on the plan attached to the notice*'.

Reasons

Appeals on grounds (c) and (d)

4. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control. The appeals made on ground (d) are that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
5. The appellants' claim under ground (c) is that the land is being used for forestry and that the works undertaken amount to '*renewal and repair*'. Section 55(2)(e) of the Town and Country Planning Act 1990 (the Act) states that the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used shall not be taken for the purposes of the Act to involve development of the land.
6. There is no definition of forestry in the Act or the Town and Country Planning (General Permitted Development) England Order 2015 (as amended) (GPDO). The local planning authority (LPA) considers that when the notice was issued, the site was not in use for forestry. In reaching this view, they have considered the size of the site (about 0.23 hectares) and the extent of tree cover. The LPA refers to the Oxford Dictionary definition of a forest which is '*an extensive tract of land covered with trees and undergrowth*' and the Collins Dictionary definition of forestry which is the '*science or skill of growing and taking care of trees in forests, especially in order to obtain wood*'.
7. The onus is on the appellants to make their case under ground (c) and there is no persuasive evidence before me to indicate that any user of the site was specifically engaged in '*growing and taking care of trees*' in a forest to obtain wood when the notice was issued. In addition, while the evidence indicates that some trees on the site were felled prior to the notice being issued, it cannot reasonably be said that this small site amounts to an '*extensive tract of land*'. I therefore agree with the LPA that the evidence does not support the appellants' claim that when the notice was issued, the land was a forest, or indeed in use for forestry. Furthermore, and, for the avoidance of doubt, there is no evidence that the land was in use for afforestation.
8. In fact, the evidence leads me to conclude that when the notice was issued, the land was in use for storage purposes, including the storage of logs from other parts of the country. In respect of the logs, it is noteworthy that the appellant

states *'the portal frame building is erected over the containers to allow the logs to dry before being stored in the wagon body for storage'*. Furthermore, and in response to the LPA's Planning Contravention Notice dated February 2023, where the appellants were asked what they were using the land for, they responded *'storage of logs to dry out, storage for trailer and caravan'*.

9. The appellants seek to make the claim that the *'metal clad building'* is not a building and that it is temporary. There is no credible evidence before me to suggest that this is a temporary facility. The evidence indicates that it was erected for the storage of logs. Owing to its construction, it has a degree of permanence on the land. It could not be said that it would be capable of very quickly being dismantled or moved with ease around the site. As a matter of fact and degree, I find that it is a building.
10. I am cognisant of the fact that Class E of Part 6 of Schedule 2 of the GPDO stipulates that, buildings, works, operations and other operations (not including engineering or mining operations) are permitted development if used for the purposes of forestry, including afforestation, and are *'reasonably necessary'* for those purposes.
11. Even if one were to disagree with my conclusion that the site is not a forest, and the site has not been used for the purposes of forestry, it would be incumbent upon the appellant to demonstrate why the shipping containers, wooden pallets, processed logs, plastic containers, water pipes, building materials, lorry backs, engineering operations and the erection of a retaining wall were all reasonably necessary for the purposes of using the land for forestry. The evidence from the appellant is neither clear nor persuasive in this regard. Hence, it could not, in any event, be reasonably claimed that the works, erected building or engineering operations on the land were permitted development by virtue of Class E of Part 6 of Schedule 2 of the GPDO.
12. In addition to the above, it is noteworthy that in respect of the erection of a building or the extension or alteration of a building under Class E of Part 6 of the GPDO, it is a condition of permitted development that the developer must, before beginning the development, apply to the LPA for a determination as to whether the prior approval of the LPA will be required. There is no evidence that before the building was erected on the land, a prior approval application was made to the LPA. Even if the appellant had been able to demonstrate that a forestry use was being carried out from the site, the building would still be unauthorised as the requirements of the conditions in E.2 of Class E of Part 6 of the GPDO have not been met.
13. The claim made by the appellant under ground (c) is that they have essentially tidied the site, and that the works and activities undertaken amount to renewal and repair. I shall deal with the actual use of the land as part of the ground (d) appeal considerations below, but the LPA's and appellants' aerial photography, coupled with the representations and photographs provided by 'Primrose Lane Residents' (PLR), demonstrates clearly that a new retaining gabion wall has been erected on the land, that land levels have been materially altered as part of engineering operations, and that a new building has been constructed on the site.
14. Even if bricks were salvaged from the land for the purposes of erecting the gabion wall as claimed by the appellants, it is the case that a new wall has been erected. The evidence is that it is an act of new development. In respect

of the land level changes, and notwithstanding the views expressed by the appellants, a comparison between the historic imagery of the site and the photographs taken by the appellant in May 2023 demonstrate, in my judgement, that land levels have been changed and that a new and very extensive hard surfaced area with road planings has been formed. Indeed, in response to a Planning Contravention Notice (PCN) dated February 2023 issued by the LPA, the appellants did not deny, in response to question 3, that land levels had been changed.

15. While it may be the case that some of the land levels on the site are essentially the same as what existed previously, in my judgement the evidence indicates that the land previously sloped more in a north to south direction. Indeed, I have no reason to doubt the claim made by the PLR about the provision of a new embankment at the southern end of the site as shown in the photograph in appendix 8 of their representation. The photographs are taken in the summer of 2023 (just after the notice was issued) and the embankment is largely without vegetation suggesting to me that it was a recent engineering operation.
16. Furthermore, there is no objective or persuasive evidence before me that the claimed facilitating development is immune from enforcement action owing to being in place for more than four years. In respect of the legal grounds of appeal, the onus is on the appellants to make their case. On the evidence that is before me, I do not find that the facilitating development could reasonably be said to be renewal or repair, or simply tidying the site. It is noteworthy that the appellants do not dispute the collective claim made by PLR that *'60-80 tons of stone and about 120 tons of road planings were brought on to the site, as were tons of logs (stored on a lorry back). Pallets, piping, plastic containers and other items were also brought to the site and were seen by the Enforcement officer.'* To my mind, this is an indication that an engineering operation has taken place on the land.
17. In respect of alleged material change of use, it is necessary to first establish the relevant planning unit. It is clear from the evidence that the land edged red on the plan attached to the notice relates to one unit of occupation. There is nothing before me to suggest that this is not the relevant planning unit. The onus is on the appellant to demonstrate why he considers that there has not been a material change of use of the land to storage and this is relevant from the point of view of considering both the ground (c) and (d) appeals.
18. The appellants' claim under ground (d) is that the site has been used for storage purposes for over twenty years and hence such a use is immune from enforcement action, and is lawful by virtue of section 171B(3) of the Act. The appellants state that the land had shipping containers on it from as early as 2009 and that a 2002 aerial photograph shows a lorry back in between two hedgerows. The appellants also state that when the land was purchased in October 2022 there were some building materials on it, including from the demolition of a row of houses which were historically on the land.
19. There is no dispute between the parties that one shipping container on the eastern boundary of the site was in situ for several years. The appellants have referred to the storage of another shipping container on the land, but the evidence does not conclusively demonstrate its existence for ten or more years.

20. On my site visit, the main parties confirmed their agreement that one shipping container had been on the site for several years and that prior to the notice being issued it had been moved. Indeed, the evidence (e.g., red colour paint as seen in historic aerial photographs) shows that it has been used as part and parcel of the erection of the metal clad building which is in use for the storage of logs. While the lorry backs are no longer on the site, I do not doubt the appellants' claim that they (i.e., British Gas box bodies) were once on the site and that they are now being used elsewhere in association with horse grazing. Indeed, on my site visit I was able to see one on the immediately neighbouring land. The appellant agreed on the site visit that the other British Gas box body was no longer on this neighbouring land.
21. Notwithstanding the above evidence, the onus is on the appellants to demonstrate that when the notice was issued, the degree and extent of storage amounted to a material change of use of the land for a continuous period of ten years.
22. In this case, the appellants have provided little evidence about how and for what purpose the container, lorry backs and building materials have collectively been stored. As part of final comments, the appellants state that the container and the '*British Gas box bodies*' were used for storing '*building materials in association with the previous owner's property maintenance business*', but this claim is not reasonably supported with say any photographic or statutory declaration evidence from previous occupiers and/or visitors of the site. Furthermore, the evidence from PLR casts sufficient doubt about this claim in so far that residents state that the previous owner visited the site perhaps once or twice a year.
23. While it is conceivable that some of the bricks/stone may have been stored on the land following the demolition of the former houses on the land, I find that the evidence is that the degree of storage was *de minimis* or inconsequential in use terms. It could not reasonably be said to amount to a '*material*' change in the use of the land.
24. In respect of the storage containers and lorry backs, the appellant does not provide sufficient evidence relating to the purpose for which these items have been positioned on the land. It remains possible that these items may have been stored on the land on an ancillary basis and in association with a different primary use of the land. This is an important consideration, and the onus was squarely on the appellants to sufficiently make their appeals on legal grounds.
25. In my judgement, and, as a matter of fact and degree, even if the lorry backs, building materials and shipping containers had been stored on the land for a continuous period of ten years, the appellants have not persuaded me that that the degree and extent of any such storage amounted to a '*material*' change of use of the land as a primary use within one single planning unit. In any event, there is sufficient doubt about the appellants' claim that all the stored items have been on the land for a continuous or uninterrupted ten-year period, particularly as the LPA's aerial photographs dated 2018 and 2021 show no clear visible evidence of such items.
26. Even if the appellants had proven, with sufficient clarity, that some building materials, shipping containers and lorry backs had been continuously stored on the land for more than ten years, on the evidence that is before me, and, as a

matter of fact and degree, I do not consider that this could reasonably be said to have amounted to a '*material*' change in the use of the land.

27. In reaching the above view, I afford weight to the views of the PLR who state that the previous owner '*probably came to the site only once or twice a year presumably to check it was secure*' and that he was not asked to contribute to maintaining Primrose Lane as '*it was felt unfair to ask him when he came down so infrequently*'. Given the amount and extent of stored items, coupled with the above comments from PLR, I find that it could not reasonably be said that such a storage use represented a material change to the use of the planning unit.
28. I accept that infrequent visits may not rule out the claim that the land was being used for storage. However, in combination with the extent and degree of storage, it is a matter that is relevant in respect of the consideration of whether there was a material change of use of the land from the point of view of the consideration of the character of the activity on the land.
29. When the notice was issued, the evidence is that the site was being used for the storage of a significant number of items including shipping containers, wooden pallets, processed logs (the evidence indicates that these were imported from other parts of the country), plastic containers, water pipes, building materials and lorry backs. In my judgement, the degree and extent of storage is such that, as a matter of fact and degree, when the notice was issued a material change in the character of the activity on the site had taken place.
30. The extent of storage taking place on the site has certainly been enough to raise concerns by neighbouring residents who were not otherwise aware of any historic or material storage type activity taking place on the land. Indeed, it is noteworthy that the PLR state that prior to the breach of planning control taking place on the land, '*there has been a very low-key use of the land by the previous owner who was not a regular visitor and caused no inconvenience to residents.*' While the appellants assert more regular attendance from the previous owner, the views expressed by PLR cast sufficient doubt about the appellants' claim that a material change of use of the land to storage took place for more than ten years.
31. The appellants make the claim that the gabion wall was erected as a separate operation in connection with maintaining the structural integrity of Primrose Lane. In my judgement, there is insufficient evidence from the appellants to counter the LPA's view that the gabion wall is part and parcel of the breach of planning control, i.e., development which facilitated the material change of use of the land for storage. Indeed, it was clear from my site visit that the gabion wall was holding back earth and hence had enabled use of relatively flat land immediately beyond it for the storage of building materials, metal crates and the metal clad building.
32. I recognise that the gabion wall may also have the effect of ensuring some additional structural stability for Primrose Lane (although I do not have any professional evidence about this matter), but that does not, in any event, mean that this act of development was not carried out in association with unauthorised engineering operations across the site as a whole, and hence that it did not facilitate a material change in the use of the land for storage.

33. The evidence does not therefore reasonably and sufficiently indicate that the identified operational and engineering works were not carried out to facilitate the material change of use. In other words, the evidence is that such works were part and parcel of the material change of use.
34. For the reasons outlined above, I conclude that a material change of use of the land to a storage use had occurred when the notice was issued. This occurred within the last few years. This is a primary use of land within a single planning unit. On the evidence that is before me, and, on the balance of probability, I conclude that the material change of use of the land to storage has not been carried out continuously for ten years as claimed by the appellants. In addition, and, for the reasons outlined above, I conclude that the matters alleged in the notice constitute a breach of planning control.
35. For the above reasons, I conclude that appeals made on grounds (c) and (d) fail.

Appeals on ground (g)

36. The appeals made on ground (g) are that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
37. The appellants claim that a compliance period of 60 days is too short. The appellants do not indicate an alternative compliance period. The evidence does not reasonably demonstrate that it would not be possible to ensure compliance with the requirements of the notice within 60 days. In this regard, the ground (g) appeals fail.
38. I do acknowledge some of the concerns raised by residents about the effect of the breach of planning control on the integrity of Primrose Lane. It remains possible that compliance with the requirements of the notice may have some implications in this regard. In this context, it is noteworthy that if it transpires that it can be justified that a longer period is needed to deal with some of the requirements of the notice, then under section 173A (1) (b) of the Act the local planning authority can *'waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)'*.
39. As part of the ground (g) appeals, the appellants assert that land levels have not changed on the site. It is not clear if the appellants are asking me to consider an appeal under ground (f) of section 174(2) of the Act, i.e., a claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
40. I have already indicated that in my judgement the evidence indicates that land levels have changed on the site. The notice is not excessive in this regard as it simply requires that the land is returned to *'its condition prior to the development taking place'*. The purpose of the notice is to remedy the breach of planning control including the removal of operational and engineering development that facilitated the material change of use of the land for storage purposes. The steps in the notice are not excessive and hence the appeals fail on ground (f).

Conclusion

41. For the reasons given above, I conclude that appeals A & B should not succeed.
I shall uphold the enforcement notice with a variation.

D Hartley

INSPECTOR