



Appeal Decision

Site visit made on 11 December 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/X2410/C/22/3309371

Land at Former Ulverscroft Grange Nurseries, Priory Lane, Ulverscroft, Leicestershire LE67 9PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Sugden against an enforcement notice issued by Charnwood Borough Council.
- The notice, numbered E/21/0262, was issued on 9 September 2022.
- The breach of planning control as alleged in the notice is: Material change of use from plant nursery to residential use (Class C3).
- The requirements of the notice are to:
 - 1) Cease the residential use of the site
 - 2) Remove (all domestic items from inside the buildings detailed in the attached photographs SH1 and SH2 including but not limited to furniture, kitchen units and appliances, TV, log burner and bathroom)
 - 3) Remove decking, hard surfaced areas (gravelled areas, paths and paving) around building as identified in Photograph SH1
 - 4) Return the building as identified on photograph SH1 back to an open sided building as detailed in the attached photograph SH1
 - 5) Return the container back to its former condition as detailed in the attached photograph SH2
 - 6) Remove from the site any other residential items such as, but not limited to; washing lines, garden furniture, household furniture, kitchen units and appliances, TV aerial, burner flue, lighting, roller shutter, CCTV cameras etc.
 - 7) Remove all resulting debris from the site.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (a) The deletion of the words '*Material change of use from plant nursery to residential use (Class C3)*' from Section 3 and their replacement with '*Material change of use from plant nursery to residential use (Class C3) of the land within the red line as denoted on the attached plan and the provision of decking and a gravelled area adjacent to building SH1*'.
 - (b) The deletion of the plan attached to the enforcement notice and its substitution with Plan A1 (as attached to this decision).
 - (c) The deletion of the words '*shown edged and hatched red on the attached plan (labelled CBC1)*' from Section 2 and their replacement with '*shown edged red on the attached plan (labelled A1)*'.

2. Subject to the correction and variation, the appeal is allowed insofar as it relates to the provision of decking and a gravelled area and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the provision of decking and a gravelled area at Land at Former Ulverscroft Grange Nurseries, Priory Lane, Ulverscroft, Leicestershire LE67 9PB.
3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the material change of use from plant nursery to residential use (Class C3) and planning permission is refused in respect of the material change of use from plant nursery to residential use (Class C3) at Land at Former Ulverscroft Grange Nurseries, Priory Lane, Ulverscroft, Leicestershire LE67 9PB on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.
5. Since the enforcement notice was issued, the Council has granted planning permission for the change of use of the plant nursery to residential use (C3), the conversion, extension and demolition of buildings and the installation of a decking area, hardstanding and landscaping¹. A subsequent application² was submitted to vary conditions 1 (plans) and remove condition 2 (removal of lighting, decking and hardstanding), and was also approved.
6. Whilst the blue line denoting ownership shown on the approved plans is consistent with that shown on the enforcement notice plan, the area within the red line planning application site covered a smaller area. Nonetheless, it is clear from the recent planning history that part of the site subject to the enforcement notice now has planning permission for residential use, and for the specified associated development (the permitted area) and part of it does not have planning permission for a residential use (the non-permitted area).
7. Section 180 of the Town and Country Planning Act 1990 as amended (The Act) states that where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. The two planning permissions were granted after the enforcement notice was served and thus the notice ceases to have effect so far as it is inconsistent with what was permitted by those two permissions.
8. With this in mind, the main parties have narrowed down the areas of contention relating to matters that have not been approved or otherwise addressed under either of the planning permissions granted. I will proceed with my consideration of the appeal on that basis. These are:
 - Part of the decking to the front of building SH1

¹ P/22/1516/2

² P/22/2168/2

- The gravelled area to the western end of building SH1
 - The area located outside of the red line planning application site area but within the blue line, and whether this land has been used in connection with the residential use on the site.
9. The decking and gravelled area are elements of operational development and they refer to a requirement of the notice and not to the matter set out on the notice. However, as has been suggested by the Council, it is open to me to correct the notice to bring the decking and gravelled area, which is development that has served a part in facilitating the material change of use from plant nursery to residential, within the allegation. I am satisfied that I can do this without causing injustice to any party. This allows me to consider the retention of the decking and the gravelled area under ground (a).

Reasons

Ground (b)

10. An appeal on ground (b) is made on the basis that the matters stated in the notice have not occurred. The burden of proof in an appeal on ground (b) falls on the appellant and the standard of proof is the balance of probability.
11. The Council refers to a number of matters in support of their position that a material change of use of the non-permitted area to residential use had occurred at the time that the notice was served. Specifically, this relates to the parking of a caravan and other vehicles on a hard surfaced area that lies within the non-permitted area. Attention is also drawn to a seating area, now removed, that was present on the non-permitted area. The appellant does not dispute that they have stored their caravan on the non-permitted area or that vehicles have at times parked on it. However, they contend that instances of use for such purposes were occasional and that they represent a very low level of activity that does not in itself amount to a material change of use of the non-permitted area to residential.
12. At the time of my site visit, the appearance of the non-permitted area was consistent with that of a disused and overgrown former nursery site. There was no overt evidence that the non-permitted area has at any point in time been used for residential purposes. The storage of a caravan is not in itself indicative of a residential use having taken place. The appellant explains that parking on the non-permitted area has taken place for convenience when a number of vehicles have needed to park on the site (such as when the appellant, their agent and Council Officers have met on the site). This is consistent with what the Council has observed. There is no counter evidence before me to suggest that such parking arrangements occur as the norm, and indeed the plans that the Council approved when granting planning permission show two formal spaces within the red line, and the potential for further informal provision within that permitted area.
13. The burden of proof is on the appellant and their contention is that the seating area was used on an only occasional basis. I am not persuaded that an occasional use on what is only a very small part of the non-permitted area would have represented a material change of use of that land. Furthermore, whilst the notice refers to the removal of domestic paraphernalia from the site, the Council does not suggest that any such paraphernalia had been placed on

the non-permitted area. This lends further weight to the position that there was not a material change of use of the non-permitted area to residential use.

14. On the basis of the evidence that is before me and what I was able to see on my site visit, I consider that the appellant has demonstrated that, on the balance of probabilities there was not a material change of use of the non-permitted area to residential use. With respect to the permitted area, the appellant sets out that there is no need to pursue an argument that a residential use has not occurred on that land. Their submission of planning applications for residential use is compelling in the suggestion that there has been a material change of use, but in any event s180 of The Act means that the notice has ceased to have effect in so far as it is inconsistent with the planning permissions that have been granted.
15. This does however mean that the appeal on ground (b) can only succeed with respect to the non-permitted area. Therefore, even though I am allowing the appeal partially on ground (b) I am unable to quash the notice. Instead, I will amend the plan attached to the notice to reduce the extent of the land identified to that consistent with the permitted area.

Ground (a) / the deemed planning application

16. In light of my findings on ground (b) and the reduction in the area of land to which the notice relates, the appeal submitted on ground (a) does not fall to be considered where it relates to the alleged residential use of the non-permitted area. It is evident from the appellant's revised Statement of Case that they are not pursuing the change of use of the permitted area under ground (a).
17. The main issue is the effect of the decking and gravelled area on the character and appearance of the appeal site and the surrounding area.
18. Planning permission is already in place for decking along part of the front elevation of building SH1. What has been constructed covers the width of the full front elevation. The gravelled area is positioned alongside one of its side elevations and then extends out to the same projection as the decking beyond the front elevation of the building. There are paths immediately adjacent which it is understood were present in association with the nursery use, but which in any event are shown on the plans approved under the recent permissions.
19. Even taken collectively with the decking that has the benefit of planning permission, the additional decking and gravelled area are innocuous visual features and are minimal in their impact. They are positioned immediately adjacent to building SH1 and do not extend out any significant distance beyond it, covering only a very small part of the permitted area and not constituting any notable sprawl of hard surfacing. They have no perceptible impact outside of the appeal site due to the presence of vegetation, boundary treatment and the distance to the nearest receptors, and even within the permitted area itself their visual impact is only very limited.
20. Whilst the Council considers that the decking and gravel have an overly domestic appearance and one not in keeping with the original horticultural appearance of the site, the approved use of the permitted area on which they are located within is now residential. That being the case, there is no reason why development which is of a domestic appearance should be deemed in principle not to be acceptable.

21. For these reasons, I conclude that the decking and gravelled area do not cause harm to the character and appearance of either the appeal site or the surrounding area. Consequently, their retention would accord with Policies CS2 of the Core Strategy 2015 and Saved Policy CT/2 of the Local Plan 2004, where they seek to promote high quality design and to safeguard the character and appearance of the countryside. There would also be no conflict with paragraph 84 of the Framework (previously paragraph 80), where it refers to development that would re-use redundant or disused buildings and enhance its immediate setting.
22. As I have already indicated, the appellant no longer wishes to pursue the deemed planning application insofar as it relates to the change of use of the land on which planning permission for residential use has already been granted. Consequently, no case has been made out in that regard and no planning conditions have been suggested. I also have only incomplete details of the permissions that have been granted. In these circumstances, and given the protection afforded by s180 of the Act, the creation of a further planning permission for the same use would be undesirable, as it could create uncertainty as to which planning permission was in effect. For these reasons, I will dismiss the appeal insofar as it relates to the change of use.

Ground (f)

23. Section 173(4) of The Act sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Although the appellant considers that the purpose of the notice is to remedy the injury to amenity that has occurred, in my view the notice instead seeks to remedy the breach of planning control in accordance with s173(4)(a). Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive.
24. The appellant considers that requirements 1, 3 and 6 set out on the notice are excessive, in light of the planning permissions that have subsequently been granted on the permitted area. Requirements 1, 3 and 6 are to cease the residential use of the site, to remove the decking and gravelled area and to remove residential items from the land. All requirements were necessary to remedy the breach of planning control that had taken place at the time the notice was served and therefore were not excessive. Accordingly, the appeal on ground (f) fails.
25. However, whilst the appellant is concerned that the list of the items specified in requirement 6 is open ended and therefore imprecise, due to the planning permissions that have been granted they can now rely on s180 of The Act in respect of that requirement and requirements 1, 2, 4 and 5. They can also rely on my granting of planning permission for the decking and gravelled area with respect to requirement 3.

Other Matters

26. Two representations were made by interested persons in response to the appeal. These refer to matters such as the principle of residential development on the appeal site, its enforcement and recent planning history, the possible future intentions of the appellant and the impact that has occurred upon

ecological interests as a result of development that has taken place. However, these concerns are not material to my consideration of the matters that arise in this appeal, given the particular circumstances of the case.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the provision of decking and a gravelled area adjacent to building SH1 but otherwise I will uphold the notice with correction and variation. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant, and those previously granted, by virtue of s180 of The Act. In fact, in this case the combination of this appeal decision and the planning permission the Council has granted is such that it appears to me that none of the requirements of the notice will continue to have effect. In these circumstances, the Council may wish to consider withdrawing the notice, using its powers under s173A(1)(a) of the Act.

Graham Wraight

INSPECTOR



Plan

This is the plan referred to in my decision dated: 05 February 2024

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Scale:NTS

