



Appeal Decision

Inquiry Held on 12 and 13 December 2023

Site visit made on 13 December 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Appeal Ref: APP/G2245/C/22/3302818

Part of land at Widhurst Farm, Shoreham Lane, Halstead, Kent TN14 7BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jagir Singh against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice, numbered 18/00181/OPDEV, was issued on 12 May 2022.
 - The breach of planning control as alleged in the notice is the change of use of land to mixed use consisting of a builders yard premises for the processing of builders materials, storage and sales, residential use of mobile homes and caravans, parking, storage, repair, sale of motor vehicles, plant and other equipment.
 - The requirements of the notice are:
 - 1) Cease the use of land for mixed use consisting of a builders yard premises for the processing of builders materials, storage and sales, residential use of mobile homes and caravans, parking of residential and commercial vehicles, storage, repair and sale of motor vehicles, plant and equipment.
 - 2) Remove and dispose of all resultant materials, vehicles, machinery and equipment, mobile homes and any other paraphernalia from the land outlined in red on the attached map.
 - 3) Return the land to pre-existing condition.
 - The period for compliance with the requirements is 9 months.
 - The appeal was submitted on the grounds set out in section 174(2) (a), (b), (c) (d) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal was brought on ground (a), an application for planning permission was deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Application for costs

2. At the Inquiry an application for either a full, or partial award of costs was made by Sevenoaks District Council against Mr Jagir Singh. This application is the subject of a separate Decision.

Background and procedural matters

3. At the Inquiry, the appellant withdrew the appeal on grounds (a), (b) and (c). Accordingly, the appeal will proceed on grounds (e) and (d) alone. The planning merits of the development no longer fall to be considered.
4. The Inquiry sat over two days and the appellant had twelve witnesses available to give oral evidence. However, during the Inquiry, the Council confirmed that

they did not wish to cross examine all of the witnesses. Therefore, it was agreed that, whilst they did not give evidence in person, their sworn statements will be taken as submitted and given the same weight as those who gave oral evidence. As a result, only five witnesses gave oral evidence for the appellant.

Reasons

Ground (e)

5. For an appeal on this ground to succeed the appellant must show that on the balance of probability, copies of the notice were not served as required by s172 and that someone has been substantially prejudiced, as a result of this failure. The onus of proof lies with the appellant.
6. S172(2) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Council, is materially affected.
7. The appellant submits three main arguments. Firstly, that by serving all of the named copies of the notices to the main dwellinghouse, rather than serving copies personally on each named individual, the notices have not been legally served. There is a post box at the entrance of the yard which the Council should have been aware of, with copies of the notice for the occupiers placed here, rather than at the main dwelling.
8. Mr O'Keeffe, who was, and still is, living in a caravan on the site, did not receive a copy. He was therefore unaware of the implications of the notice on his home, right up until the first day of the Inquiry. As a result, he has been unable to seek professional advice, or take the opportunity to lodge an appeal. Substantial prejudice has occurred as a result and the notice should be quashed.
9. Secondly, the envelopes containing copies of the notices were not annotated with the words 'Important – this communication affects your property'. Thirdly, Mr O'Keeffe does not recall seeing a copy of the notice.
10. Dealing with these matters in turn. The evidence shows that prior to the issue of the notice, the Council served a Planning Contravention Notice (PCN). The PCN was reportedly not received and the time to respond was extended. The appellant responded to this through his former planning agent. The completed and signed PCN was dated 19 October 2018, with a revision dated 6 August 2019. It set out the various activities taking place on the site and at section 5 it gave the names and addresses of all those who had an interest in the land.
11. There were a number of named individuals with given addresses at Widhurst Farm Shoreham Lane Halstead TN14 7BY. Mr Love and Sherepunjab Properties Ltd were also identified with alternative addresses. From the Certificate of Service, the Council served six copies of the notice on 12 May 2022. The Certificate of Service also dated 12 May 2022, confirmed that these copies were personally served to Widhurst Farm by a Council officer. It is of note that a copy was addressed to Mr O'Keeffe. The remaining copies to other addresses were sent by first class post.

12. With regard to the marking of the envelope, where the name and address of a party is known, there is no requirement under, s329(2)(b) of the Town and Country Planning Act 1990 (TCPA) to mark the envelope in any prescribed way. Since the PCN set out the names and addresses of those with an interest in the land, there was no need to annotate the envelopes in the manner suggested.
13. Mr O'Keeffe submitted a sworn statement and gave oral evidence at the Inquiry. On cross examination, he confirmed that when he receives post addressed to him, there are occasions where he will put them, unread, into the bin. It is therefore not clear whether he received a copy of the notice, or not. He confirmed that the appellant does assist him with his post on occasions. He also conceded that he was aware of the contents of the notice and its implications, by the time he went to the Solicitor to produce his sworn statement, which was at the appellant's request.
14. Even if I was to accept that it may have been judicious to personally serve a copy of the notice on the individuals living or occupying the appeal site, I am satisfied that the manner that the Council chose to serve the notice fulfils the requirements of TCPA. Furthermore, and in any event, Mr O'Keeffe was able to attend the Inquiry and give evidence. Thus having considered all matters, and as a matter of fact and degree, I find no prejudice has occurred and the appeal on ground (e) fails.

15. Ground (d)

16. To succeed on this ground, the onus is upon the appellant to demonstrate, on the balance of probabilities that, at the date 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. In other words, to show what is alleged in the notice, is immune from enforcement action, having subsisted for the ten-year time period laid down by s171B.
17. The Council issued the first notice against the mixed use together with some additional operational development on 9 January 2019. This notice was withdrawn on 17 March 2021. The Council then issued a second amended notice, which is the subject of this appeal, on 12 May 2022, under the 'second bite' provisions. There is no dispute that it is the date that the original notice was issued, that sets the timeframe for establishing the relevant period for the ground (d) appeal. The time for assessing immunity is therefore prior to 9 January 2009.
18. At the Inquiry, the appellant acknowledged that he is unable to provide evidence to demonstrate that part of the land targeted by the notice, has been used for the activities cited in the allegation, continually throughout the relevant period. An alternative plan was agreed by the parties that could be substituted for the original notice plan, in the event that the ground (d) appeal was to succeed on the remainder of the appeal site.
19. In view of this, the other evidence and my observations, the land owned by the appellant appears to be in three separate planning units. Namely, the dwelling and its residential curtilage, the former agricultural field and the yard area which is included in the notice plan. Apart from the more recent overspill of material storage into the field, these three areas appear to be generally functionally, visually and physically independent from each other.

The case for the appellant

20. The appellant's evidence sets out the history of the site, since he purchased, firstly the original dwelling and yard, including a mobile home, in 2006, followed by the remaining field in 2008. His evidence at the Inquiry broadly mirrors that, set out in his sworn statement dated 27 November 2023.
21. Looking back to 2009 and beyond, the chronology of events appears to be that an existing caravan was destroyed by fire a short time after the appellant purchased the site. A replacement caravan and a smaller caravan were then purchased during June 2008. These were brought onto the site during December 2008.
22. Planning permission was originally granted for a replacement dwelling in 2007. An amended proposal was then allowed on appeal on 20 October 2008 (APP/G2245/A/08/2069069). The works to demolish the original dwelling and build the replacement commenced shortly after this. The appellant confirmed at the Inquiry that he was directly involved in these construction works. He moved into the larger caravan from around late 2008.
23. Mr O'Keeffe then occupied one of the caravans when the family went abroad in late November 2008. He continued living on the site in one of the caravans after the family returned. The appellant's wife and children moved into the larger caravan during the summer of 2009 and remained there until 2016, when they moved into the completed dwelling. A third caravan was brought to the site during 2009 and was used for storage and overspill accommodation by the family. Therefore, as at least one caravan was residentially occupied prior to, and following his purchase of the land, the ongoing residential occupation has been continuous since 2008.
24. Turning to the other uses, the various photographs submitted are purported to show both vehicle and building material storage taking place on the site since about 2007. The mixed use of the site then continued unabated until the service of the first notice.
25. The evidence of the former landowner sets out the works he undertook following his purchase of the site in 2003. This included some general operational development and the siting of a caravan on the yard which he then occupied. The land was used for general and motor trading from about 2004. He sold the dwelling and yard to the appellant in 2006 and relocated his business at the same time. The caravan continued to be occupied up until it was destroyed by fire in 2006. The mixed use of the yard started within his ownership and was then continued by the appellant to the present day.
26. The evidence of Mr O'Keeffe confirms he has occupied a caravan in various locations within the yard area since 2008. The yard has been used as a builder's yard, motor trading yard and for the storage of plant and equipment throughout that time.
27. The evidence of Mr Downes confirms that he acted for both the appellant and former owner of the site on various planning applications made to the Council. He submits that the use of the land as alleged commenced before April 2008.
28. Thomas Connolly has known the site since before the appellant's purchase. He confirmed the residential use of the caravans and that a friend had bought a vehicle from the former owner. He has traded various items with the appellant

over the years. Mr Nairne's evidence confirms that he connected services to the mobile home and that the yard area had building materials, vehicles, plant machinery and other equipment stored on it.

29. The remaining witnesses who did not give oral evidence generally set out their recollections of the appeal site over the years. I have given their statements the same weight as those who appeared before me.

The case for the Council

30. In short, the Council's case is that the appellant has not demonstrated that, each element of the component mixed use, existed as a main use prior to 9 January 2009, and has been continuous throughout the whole period up to the issue of the first notice. In support the Council's witness pointed to a number of site inspections that were carried out by their officers at various points during that time. They also referred to a site visit made by the Inspector who describes the site, whilst dealing with the appeal referred to above.
31. They also point to several historic planning applications, where Mr Downes was acting for the appellant following his purchase of the site. During this time, he submitted a number of descriptive documents in support of these applications. In these there was no mention of the various uses now being claimed.

Assessment

32. The allegation in the notice refers to a specified mixed use of the land. At paragraph 5 it requires that this same mixed use ceases. The allegation set out in the notice is not in dispute. This means that the appellant would need to demonstrate firstly, that the specific mix of uses existed before 9 January 2009, that this mixed use constituted a material change of use of the land, that was in breach of planning control and that it has been continuous throughout the relevant time.
33. During cross examination, the appellant confirmed that he was actively involved in the building works at the main dwelling. From the evidence, the caravan occupied by him and his family and the one used for their storage, would have benefited from rights conveyed by Part 5 of the GDPO for the duration of those works. In contrast, it was clear from Mr O'Keeffe's evidence that, whilst he did some work for the appellant, he was not directly involved in the building works on the dwelling. Accordingly, the caravan he lived in was occupied in breach of planning control. I have nothing to suggest that this position changed during the relevant period.
34. Turning now to the other alleged uses. The evidence of the appellant includes a number of photographs, including aerial photographs dated May 2007 and September 2008 and the two-family photographs dated 25 April 2008 and 7 September 2009. I note that the date and exhibit references appear to have been added later on these. Nonetheless, I have no reason to doubt their authenticity.
35. I acknowledge that in combination the photographs appear to show a limited quantity of building materials and vehicles on the site during the earlier years. The appellant made it clear that these were not connected to the replacement dwelling.

36. However, it is pertinent that much of the written evidence from the appellant's witnesses, describe the nature of the uses taking place more recently, adding little to verify the date that these commenced, or their scale throughout the relevant period. Consequently, from the evidence before me, there is little to corroborate that the storage of building materials and other components of the mixed use, were at a scale where a material change of use had occurred.
37. This appears to be consistent with the Inspector's comments when visiting the site in mid-October 2008. Whilst I accept that his visit predates 9 January 2009 by several months, in his decision he describes the land as being grazed by goats with several chicken sheds and a pigsty. He goes on to comment that the agricultural use of the land had been abandoned. The findings of the Investigation Officer who visited the site on 26 February 2013 to investigate the caravans refers in his written report, to some vehicles and two storage containers but makes no reference to a substantive mixed use taking place on the appeal site.
38. This is also consistent with the details submitted with the planning application for the stable block on 22 May 2009 by Mr Downes. He clearly refers to the land as vacant agricultural land at section 15. Similarly, the planning statement dated 3 July 2009 and design and access statement received by the Council on 8 June 2009, refer to agricultural land, buildings and a farmyard. There is no mention of any other uses taking place, as now claimed.
39. When asked on cross examination why the evidence being given appears to contradict the information given in the above applications, Mr Downes explanation was that it was his mistake, and he had not wanted to draw the Council's attention to it.
40. In combination I find that the Council's and Inspector's evidence, which was noted at the time of the various inspections, to be credible. The evidence provided by the remaining witnesses provides little to assist, as they refer to various uses that they witnessed taking place on the site, but there is a marked lack of precision about any specific dates, the exact nature, scale and duration of the activities they witnessed.
41. Looking at the evidence as a whole, it is apparent that the appeal site has been used for the unauthorised residential occupation of one caravan throughout the relevant time. It is also evident that there have been limited building materials stored and some vehicles parked within the appeal site during the relevant period. This is clear from the family photographs. However, I am not satisfied that, on the balance of probability, with the evidence I have before me, that the scale of the building materials, plant and equipment storage was at a level where it resulted in a primary storage use.
42. With regards to the vehicle storage and repairs, from the appellant's evidence, it is apparent that from time to time, he has bought and sold vehicles from the site. Indeed, there were several vehicles for sale at the time of my visit. I also accept that where vehicle repairs were necessary prior to sale, these would have been carried out from the yard. However, again there is very little evidence to suggest that this was on a scale that would represent a material change of use.

43. Moreover, I have nothing before me to suggest that the land has at any time been used for the processing of building materials, or that building materials were being sold from the site on a substantive basis.
44. Therefore, although I accept that mistakes or omissions can be made on formal documents, the responses given by the appellant's Agent, on the various planning documents, and the officers' site inspection notes, are clearly contradictory to the evidence now being presented. They all indicate that the land was unused agricultural land, with little reference to any of the claimed uses alleged in the notice. Consequently, I have little to suggest that these were being carried out on a scale that would point to a mixed use being carried out throughout the relevant period.
45. Overall, as a matter of fact and degree, based on the evidence before me and the particular circumstances of this case, I am not satisfied that the appellant's evidence as a whole is sufficiently precise and unambiguous, to demonstrate that on the balance of probability, a mixed use as alleged in the notice had been carried out, for a continuous period of ten years beginning with the date of the breach. Accordingly, the appeal on ground (d) fails.

Conclusion

46. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Stephen Downes Agent for the appellant and witness

He called;

Mr Stephen Downes In his capacity as former Agent.

Mr Jagir Singh Appellant

Mr Thomas Love Former Owner of Widhurst Farm

Mr O'Keeffe Tenant at Widhurst Farm

Mr Thomas Connolly Visitor to the site

Mr Vincent Nairne Visitor to the site

FOR THE LOCAL PLANNING AUTHORITY:

Mr Brandon Brett

Counsel Instructed by Sevenoaks District Council

He called;

Nicola Furlonger Principle Planning Officer and Instructing Officer

Documents handed in at the Inquiry:

1. Signed statement of Common Ground dated 7 December 2023
2. Two photographs showing the original dwelling dated September 2008 and one of the completed dwelling dated July 2023.
3. Amended agreed plan for substitution, if required, for the ground (d) appeal.
4. Extracts of legislation s329 (service of notices); Town and Country Planning General Regulations; Local Government Act 1972 s 233.
5. *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15