



Appeal Decision

Site visit made on 29 January 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/D2320/C/23/3314963

Land at The Hillocks, Blue Stone Lane, Mawdesley, Ormskirk L40 2RJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Susan Welsby against an enforcement notice issued by Chorley Borough Council.
- The notice was issued on 12 December 2022.
- The breach of planning control as alleged in the notice is material change of use of land to a mixed use of land for agricultural, residential, building maintenance and repairs business and commercial storage purposes including commercial parking and storage of plant equipment.
- The requirements of the notice are to:
 - i) Cease the use of the Land in connection with a building maintenance, groundworks and repairs business.
 - ii) Cease the use of the Land for commercial storage purposes including commercial parking and storage of plant equipment.
 - iii) Remove all materials stored upon the Land in connection with a building maintenance, groundworks and repairs business and/or for commercial storage purposes.
 - iv) Remove all vehicles, trailers, equipment and plant equipment either parked or stored upon the Land in connection with a building maintenance, groundworks and repairs business or for commercial purposes.
 - v) Remove the diesel tank from the Land.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The Notice

1. On an appeal, any defect, error, or misdescription in an enforcement notice (the notice) may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The breach of planning control alleged in the notice is the 'material change of use of land to a mixed use of land for agricultural, residential, building maintenance and repair business and commercial storage purposes including commercial parking and storage of plant equipment.' However, none of the requirements in paragraph 5 of the notice refer to the cessation of the 'mixed use' of the land, which is the alleged breach of planning control. In the interests of clarity, I am satisfied that a correction of the notice to include reference to cessation of the mixed use would not cause injustice to any parties in this case.
3. In addition, the breach of planning control alleged in the notice makes no reference to 'groundworks' as part of the business, whereas requirement i) of the

notice seeks its cessation. However, groundworks is referred to as part of the business in the reasons for issuing the notice and throughout the Council's evidence. Therefore, within the four corners of the notice, it is sufficiently clear what the breach of planning control the notice relates to. Moreover, the appellant has not raised this issue and has therefore clearly understood what the breach of planning control is. Consequently, I find no injustice would be caused to any parties were I to vary the breach to include groundworks within the description of the business.

The ground (b) appeal

4. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the alleged breach of planning control has not occurred as a matter of fact.
5. The appellant accepts the appeal site is used for agricultural, residential, building maintenance and repairs and the storage and parking of plant, vehicles and equipment. However, they argue that the other uses alleged in the notice are not taking place. The appellant does not explicitly state which uses are not taking place, therefore it is not entirely clear what their ground (b) appeal is. Nevertheless, it is assumed that they are referring to the use of the word 'commercial'.
6. Under their ground (c) appeal, the appellant confirms that they and their family run a property maintenance and repair business and that vehicles, plant, materials and machinery in relation to this business are kept on the site. Therefore, as these are part of a business, there is a commercial aspect to the allegation, notwithstanding the appellant's ground (c) appeal argument that this is ancillary to the primary use of the land. Accordingly, the alleged breach of planning control has occurred as a matter of fact.
7. The ground (b) appeal therefore fails.

The ground (c) appeal

8. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
9. The appellant contends that the parking of plant and machinery and the storage of materials used as part of the business/businesses operating from the appeal site is ancillary to the primary use of the land. Moreover, some of the plant and machinery is also used for the general maintenance of the agricultural and equestrian use of the site.
10. The Council has provided copies of photographs taken of the site in July and November 2022. These photos depict a range of plant and machinery typically associated with a business, including mini-diggers, a mini-dumper, a forklift truck, a whacker plate, a mini-road roller, various bucket and breaker attachments for a digger, livestock trailers, a twin-axle tipper trailer, a flat bed trailer and a twin-axle flatbed trailer. In addition, they show a small fuel tank; wooden crates containing various drainage pipes and fittings; paving stones and cobbles; curb stones; a large pile of what appears to be stone/hardcore; builders' bags of what appears to be sand; crates of stone paving slabs; fence panels; two large stacks of insulation board; and various other items such as wheelbarrows, buckets and plastic containers.

11. During my site visit, I observed a similar amount of plant, machinery and materials, as well as a significant number of tools, including jet washers, pneumatic breakers, hedge cutters and strimmers. There was also a large amount of what appeared to be containers of paving joint compound.
12. I note from the photographic evidence and the observations I made on site that contrary to the appellant's contention, there did not appear to be any equestrian or agricultural use taking place within the appeal site. Whilst there was a stable building, this was used for the storage of tools and machinery. The large lawned area to the north and west of the dwelling and the area in which the plant, machinery and materials were stored was not secured by fencing and therefore would unlikely be suitable for the keeping of horses or livestock. Therefore, whilst some of the plant and machinery may be used for the general maintenance of the site, this would be on a very limited basis.
13. I acknowledge the appellant's argument that the storage of plant, machinery and materials used as part of a business can sometimes be ancillary to the primary use of the land. However, in this instance, the amount of plant, machinery and materials is so significant that it changes the character of the primary use of the land. Therefore, it constitutes a material change in the use of the land to that as alleged in the notice, for which planning permission is required. As planning permission has not been granted for this mixed use, a breach of planning control has occurred.
14. The ground (c) appeal therefore fails.

The ground (d) appeal

15. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate that at the time the notice was issued on 12 December 2022, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
16. The appellant has provided numerous documents in support of their case that the appeal site has been used in relation to a building maintenance and repairs business and parking and storage of plant, vehicles and equipment for in excess of 10 years. The documents include receipts and invoices dating back to prior to 12 December 2022. However, whilst many of these receipts and invoices refer to Paul, Susan and/or Michael Welsby, many have no reference to the address of the appeal site on them. Although some are addressed to 'The Hillcocks', there are others addressed to 'Horseman Farm, Wood Lane, Heskin, PR7 5NP', which is clearly not the appeal site.
17. Moreover, many of the receipts and invoices appear to relate to the hiring of plant and machinery for very short periods of time. It is reasonable to consider that whilst the hired plant and machinery may have been delivered to the appeal site, it would have then been quickly transported off-site to carry out the work that it was hired for. It would then likely have been returned to the hire company after it was no longer required, having spent very little time on the appeal site.

18. Nevertheless, a large proportion of the receipts and invoices do have the appeal site address and relate to the purchase of plant, machinery and materials and cover the requisite 10 year period. However, they do not indicate that the appeal site was used for the storage of them, only that it was the delivery/invoice address.
19. Based on the evidence before me, it appears a business has been registered at/operated from the appeal site prior to 2012. However, the crux of the matter is whether it has been on such a scale that it resulted in a material change of use of the land in excess of 10 years prior to the date of the notice being issued and the use has continued since without any significant breaks. The receipts and invoices simply indicate that these goods have been delivered to the site. They do not indicate the time period they were stored on the site, if at all, or how much of it was stored at any one time. Moreover, the bank statements simply suggest the appeal site is the business address.
20. Furthermore, the amount of supporting documentation dated pre-2015 is sparse, particularly compared to the amount of documentation post-dated 2015. This suggests a significant change in the scale of the use between these two periods.
21. The 2013 aerial photograph is of poor quality and whilst it shows there could be some vehicles and goods stored on the land, it is not clear what these were in relation to. In any event, the level of storage was clearly not to the extent that it was at the time the notice was served. Any disturbance in the land could be related to the equestrian use of the land at the time. There is nothing to suggest it is the result of vehicles associated with the alleged business use.
22. The 2015 aerial photograph is of a better quality and shows what appears to be a white van parked to the east of the site. It also shows some items stored in an area in the southwest part of the site, as in the 2013 aerial photograph. However, it is not clear what these items relate to.
23. The 2016 aerial photograph shows more activity on the site with what appears to be a couple of trailers in the field to the west and more vehicles on the site. However, the nature of the vehicles and items is not clear. The 2017 and 2018 aerial photographs show what appears to be a fenced off area to the south west that is used for the storage of various items. However, the 2019, 2020 and 2021 aerial photographs show this area to be largely cleared of these items and grassed over, indicating it was no longer used for storage. The 2020 aerial photograph shows the new dwelling under construction with what appears to be various building materials stored to the east of it, likely in use for its construction. There appears to be some items stored to the west of the site but it is unclear what these relate to. The 2021 aerial photograph shows the bungalow largely completed. The stables to the west have been removed and there is some storage of items in their place.
24. The aerial photographs show that it is likely that a business operated from the site at the time the photographs were taken. However, the scale of the use was very limited. What appears to be just a van and possibly some materials in 2015 indicates that it at the time it was likely to be ancillary to the primary use of the land. Therefore, it suggests a material change in the use of the land had not yet occurred. This is supported by the limited documentation dated prior to 2015. Whilst the level of storage increases in the more recent aerial photographs, it is not clear what use this storage relates to. I acknowledge the aerial photographs are a snapshot in time. Nevertheless, there is no substantive evidence to

suggest they are not representative of the use of the site and the activities taking place on it at the time they were taken.

25. Representations from neighbouring residents also indicate that the material change of use occurred after 2015. Whilst they do not rule out the operation of the business from the site prior to this, it was only after 2015 that it reached such a scale that it became discernible to them.
26. I have also had regard to the statutory declarations made by Susan Welsby and Michael Welsby. However, they simply confirm that a business has operated from the site, under various names, since 2010 and that the site has been used for the storage of vehicles, plant and machinery throughout this time. They provide little indication of the scale of the use throughout this time.
27. Overall, I find that a business has operated from the appeal site since 2010. However, the evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the scale of the use amounted to the alleged material change of use to a mixed use of the land for agricultural, residential, building maintenance and repairs business and commercial storage purposes including commercial parking and storage of plant equipment took place in excess of 10 years prior to the notice being issued.
28. The ground (d) appeal therefore fails.

The ground (f) appeal

29. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
30. The purpose of the notice is clearly to remedy the breach of planning control. In doing so, the notice can legitimately require cessation of the unauthorised use and the removal of items that are part of and facilitate that use, in order to restore the site to its condition before the breach took place.
31. *Mansi*¹ confirmed that the requirements of an enforcement notice should not purport to prevent the exercise of lawful rights for the use and development of land. Consequently, the notice should not require the removal of items from the site that were previously connected with its lawful use and to which it can revert.
32. The appellant argues the notice would preclude them from working from home, or bringing any vehicles, items or anything else connected to their business onto the land, even to the extent that these are ancillary or incidental to the use of the dwellinghouses. However, the notice requires the cessation of the unlawful use and the removal of all materials, vehicles, trailers, equipment and plant equipment in connection with this use. It would not prevent the use of the land or the storage upon it for any of these items if they were deemed to be ancillary or incidental to the dwellinghouse because it would not amount to development. The notice cannot, and does not, take away these rights. I note the Council confirm as such.
33. The appellant also argues that there has been a diesel tank on the site since before 11 December 2012. However, the Council contend that the tank was

¹ *Mansi v Elstree RDC* [1964] 16 P&CR 154.

replaced in 2021, which the appellant does not dispute. The appellant also contends that the requirement to remove the diesel tank is excessive as it is not referred to in the breach of planning control. However, the tank clearly facilitates the unlawful use. It is not necessary to specifically refer to it in the description of the breach of planning control. Therefore, it is not excessive to require its removal.

34. Overall, the requirements of the notice do not exceed what is necessary to remedy the breach of planning control; or, any injury to amenity. I therefore conclude the ground (f) appeal must fail.

The ground (g) appeal

35. This ground of appeal is that the period for compliance is unreasonably short.
36. The appellant argues that two months is not sufficient time to find an alternative premises to relocate the business and the items on the land and therefore a period of six months is required.
37. The Council has provided evidence that there are suitable premises available within the locality. Nevertheless, even if they are still available, lease agreements would need to be drafted and signed and then time required to remove the necessary items. Two months to carry out all of this would be unreasonably short. Consequently, I consider a period of six months would provide sufficient time to find an alternative premises and comply with the requirements of the notice.
38. The ground (g) appeal therefore succeeds and I shall vary the notice prior to upholding it.

Formal Decision

39. It is directed that the enforcement notice is varied by:
- a) The deletion of the word "maintenance" under paragraph 3 and substituting "maintenance, groundworks".
 - b) The deletion of requirements i) and ii) under paragraph 5 and substituting "Cease the mixed use of the land for agricultural, residential, building maintenance, groundworks and repair business and commercial storage purposes including commercial parking and storage of plant equipment by:
 - a. Ceasing the use of the Land in connection with a building maintenance, groundworks and repair business; and
 - b. Ceasing the use of the Land for commercial storage purposes including commercial parking and storage of plant equipment."
 - c) The deletion of the words "2 (two)" under paragraph 6 and substituting "6 (six)".
40. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

A Walker

INSPECTOR