



Appeal Decision

Site visit made on 5 March 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/J4423/C/23/3325722

Plots 51, 52, 53 and 56 Bole Hill Road Allotment Gardens, South of Bole Hill Road, Sheffield

- 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 Chris and Katie Hardy of The Promised Land Community CIC against an enforcement notice issued by Sheffield City Council.
- The enforcement notice was issued on 7 June 2023.
- The breach of planning control as alleged in the notice is (1) the material change of use of the Land to a mixed use for allotment, garden, a learning and skills educational centre (including upcycling and making goods/products) and a community facility for meetings and social events, and as a music venue, event hire and the provision of food and drink, and associated storage; and (2) the carrying out of operational development on the land in connection with and being part and parcel of the unauthorised uses described in paragraph (1) consisting of (i) the erection of buildings in the approximate positions marked [on an attached photograph] and (ii) the provision of a stage, gates, fencing, a mulch storage area, and engineering operation to change the land levels to form a car park and drive.
- The requirements of the notice are to (1) cease the use of the land as a venue for meetings and social events including as a music venue, event hire and the provision of food and drink, and associated storage; (2) cease the use of the land for learning and skills educational centre, including for the upcycling/making and processing of goods and products; (3) demolish and remove from the land all the unauthorised development [previously] described; and (4) restore the excavated land to its former form/level like the image shown [attached to the notice].
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(b)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. The Council have conceded one solecism in the notice, and there are others. It is agreed that the allegation of the mixed use contains a stray comma and that the intention is to allege an 'allotment garden' as one element of that mix, rather than their being separate matters.
2. The alleged mixed use comprises several elements and it is not entirely clear from the allegation whether some of those elements are intended to be inclusive of others. The alleged 'music venue' appears to stand alone in the allegation, but the requirement is to cease the use as a venue for meetings and events including as a music venue. Similarly with the 'event hire and provision of food and drink'. I consider below, if necessary, whether the notice requires correction or variation in respect of these elements.

3. Unusually, the notice does not state when it appeared to the Council that the relevant alleged breaches of planning control had taken place. The notice alleges the carrying out of both operational development and a material change of use, with the former said to be 'in connection with and being part and parcel of' the latter. Usually, enforcement action against operational development must be taken within four years of the substantial completion of such development, and the Council's officer's report appears to confirm that, if such a deadline were to apply here, it would have been missed in respect of shipping containers, gates and the (physical) creation of a car park. Again these matters will be given further consideration below where necessary.

Main Issues

4. The appeal is raised on a number of grounds, although not all grounds are directed to every element of the allegation. The grounds of appeal are helpfully summarised by the appellants' table at paragraph 3.3 of their statement of case. However, I do need to treat this with some caution. The alleged operational development for which permission is sought under ground (a) is alleged to have been contingent on the change of use (for which permission is not expressly sought on ground (a)). As there is an appeal on ground (b) to say that the alleged change of use has not occurred, if that succeeds then it follows that the operational development cannot have been carried out 'in connection with and part and parcel' of the use alleged but I would need to consider whether the notice is capable of correction to reflect any success on ground (b). I would also need to consider whether the operational development can be divorced from the 'use' allegation for the purposes of a ground (a) appeal, because that is not how the Council have put the matter.
5. In considering the legal grounds of appeal, the appeal on ground (b) seeks to demonstrate that the alleged mixed use has not occurred, specifically in relation to the alleged learning and skills educational centre and the community facility for meetings. It also seeks to demonstrate that the alleged engineering operations to change the land levels to form a car park and drive have not happened.
6. As to the use as a music venue, event hire and the provision of food and drink and associated storage, the appeal arises on ground (c) which is to say that it is contended that such matters do not amount to a breach of planning control. Here, the appellants rely on the application of permitted development rights to use land for any purpose for up to 28 days per year. In order for such a ground to succeed, however, the appellants would also need to demonstrate that such a use is not (or has not been) an element of the mixed use that is alleged, or of any other permanent underlying land use, but that it is a separate 'stand alone' use (whether or not part of a temporary mix) that occurs temporarily on the land from time to time as an entirely discrete use. Similarly, the lawfulness of the 'associated storage' and the mulch storage area may depend on my findings as to the underlying land use.
7. I shall therefore consider the legal grounds first, before considering the consequences for the notice and for any deemed planning application that might then arise.
8. The burden of proof in legal grounds of appeals lies on the appellants, to the standard of probabilities. This broadly means that, for the appeals to succeed on these grounds, I need to be satisfied that it is more likely than not that the

- alleged development has not happened (ground (b)) or that it does not require (or already has) planning permission if it has (ground (c)).
9. As noted above, the notice does not specify when it appeared to the Council that the alleged breach of control had taken place. A legal ground of appeal that has not been brought is ground (d) which would be to say that the alleged development is immune from enforcement action because, by the time the local authority took any action, it was too late to do so. The absence of this ground gives me particular circumspection when considering any consequences for the notice in respect of the other grounds. It is a ground that has not been raised perhaps in the light of the Council's allegation that, if correct, would require a 10 year immunity period to be demonstrated in respect of all elements if a ground (d) appeal were raised. I will discuss this below.
 10. The Council's reasons for issuing the notice related to the effects of both the use and the operational development on the Green Belt. It also alleged visual harm to the character and appearance of the surrounding area arising out of the operational development alone. These are therefore the main issues for consideration on the deemed planning application.
 11. The appellants do not expressly seek planning permission for any of the alleged mixed use (it being the case that the element of use as community allotments does not require it) but limit their ground (a) appeal to the buildings, gate and fencing. In respect of the buildings, they do not seek permission for building D (which appears to have been the same as the 'stage' separately alleged) but they do invite me to grant permission for an additional building, building J. The erection of this building is not alleged in the notice and it therefore cannot form part of the deemed planning application which is limited to some or all of the development alleged in the notice.
 12. The appeal on ground (f) invites me to find that the steps required to be taken by the notice exceed what is reasonably necessary to remedy either the breach of planning control or any injury to amenity that it has caused. Generally the appellants' case here invites me to require modifications to the buildings and fencing rather than their removal, by reference to what is needed for the underlying allotment use and to the 'fallback' position as to the height of fences provided by permitted development rights.

Reasons

The legal grounds of appeal

13. The Council's officer report authorising enforcement action did not discuss a number of elements of the allegation now found in the notice. It described (i) an 'unauthorised change of use of land to a rehabilitation and educational activity centre' and (ii) operational development including 'erection of gates and stationing of shipping containers'. It described complaints having been made in April 2019 about the siting of containers, the installation of large metal gates, the creation of a car park and an unauthorised use for a licensed music venue. A telephone conversation with one of the appellants (of which no attendance note has been produced) the following month revealed that one container is used for tea making &c. and the other is used for lavatories and storage of allotment paraphernalia. The use was said to be about helping people such as the unemployed and ex-offenders, with the focus on growing food and appreciating nature and wildlife, and teaching general social skills.

14. These matters were then analysed in the report. The shipping containers were described as buildings in their own right. They were described (but without further analysis) as part and parcel of an unauthorised land use. The visual impact of the containers, gates and new access were discussed.
15. What was then described as a 'mixed use' to include rehabilitation of people with life and social skills, by working with nature on the allotment, was said to be 'still within the allotment use'. The complaint about use as a music venue received no further attention. The operational development was said to be visually harmful and inappropriate in the Green Belt, but with no attention paid to why the operational development might be 'part and parcel' of any unauthorised use (which, with the report having said that the 'rehabilitation' use remained part of the allotment use, was not identified).
16. Despite having found that the 'rehabilitation' use remained part of the allotment use, the report went on to authorise enforcement action requiring 'the cessation of the use of the land for rehabilitation and education purposes and the removal of any operational development associated with it, including but not limited to x2 metal shipping containers, metal gates, fencing and the car park and drive access'.
17. It is very difficult to understand how the analysis found in the Council's report resulted in the decision that it did. In the course of the appeal, the Council have submitted some further information to support the allegation made. This comprises an apparent search of the appellants' website and a copy of an e.mail sent by the appellants to the Council in June 2023 albeit after the notice was received.
18. The e.mail describes having taken over a derelict piece of land and turning it into a 'multi purpose' community space which in short consists of an orchard, an apiary, veg plots, cutting garden and community spaces. Sheds and summerhouses to allow all-weather meetings had been built. The purpose of the fencing and gates was to prevent crime and was done at the landlord's request and to satisfy insurers.

Learning and skills centre and community facility

19. Although describing the land as a 'multi purpose' community space, it appears that the appellants were not at that point professionally advised and I give no weight to their description in those terms. What in substance they appear to be describing is the use of the allotments for community purposes which involve developing both gardening and social skills in the community. The appellants' statement explains that no formal learning or skills training is carried out and there are no educational activities carried out on the site.
20. The notice refers to 'upcycling' which appears to have resulted from the Council's search of the appellants' website. This is explained in the appellants' statement to mean the re-use of older items to support the site's (allotment) function. No sales of any repurposed items are said to take place from the site, although the website extract supplied by the Council suggests that 'produce, floral posies and upcycled items' are for sale during summer music events held at the site.
21. The allegation referring to 'a community facility for meetings and social events' appears to arise from what has been said by the appellants (and repeated in

their June 2023 e.mail) and from a search of their website. The appellants explain this to mean meetings held in the primary course of running the allotments.

22. As referred to above, it is for the appellants to prove their case and here there are no statutory declarations or other first hand documents supplied by the appellants that set out the past and present use of the site. The only documents before me that appear to have been written by the appellants are the June 2023 e.mail and an extract from their website, both provided by the Council. Nonetheless, on the basis of the evidence before me, I agree with the analysis found in the Council's officer report: that the use for rehabilitating people is 'within the allotment use'. The now-alleged use as a community meeting place is not mentioned in that report and no authorisation was given to enforce against it.
23. The overriding impression given is that the site is not being used as an educational centre or community meeting place *per se* – and the Council do not report having received any complaints about such uses – but that any upskilling or socialising that takes place is generally within the remit of the authorised use of the site as community allotments. Using one of the shipping containers for 'tea making' &c. would be commensurate with such a use, as would the provision of restroom and allotment storage facilities. The description of the use found in the June 2023 e.mail lists 'community spaces' as the last of five different elements, the other four of which are entirely consistent with the use of the land as allotment gardens. The scale of any 'upcycling' or making goods or products is not described in detail but there is nothing before me to suggest that it is not ancillary or incidental to the usual use of the site. There is no suggestion, for example, that goods or materials are specifically brought onto the land for this purpose.
24. On balance therefore I am satisfied that such use as a 'learning and skills educational centre' or 'community facility for meetings and social events' as exists is consistent with, or ancillary to, the primary (authorised) community allotment use of the land and that these elements have not formed primary elements of a mixed use.

Music venue and event hire

25. The appellants claim that the use as a music venue and for event hire benefits from the temporary planning permission(s) conferred by article 3 of, and Class B of Part 4 to Schedule 2 of, the Town and Country Planning (General Permitted Development) (England) Order 2015 ('Class B'). The allegation here, however, is of a permanent mixed use including the use as a music venue and for event hire. (I note at this juncture that merely hiring out the premises to another user would not of itself necessarily amount to a different use for planning purposes; and the type of event for which the land is allegedly hired, if different from use as allotments, is not specified in the notice. This suggests that the part of the allegation referring to a 'music venue, event hire and the provision of food and drink' should be read together.)
26. Therefore, in order for the appellants' appeal on ground (c) to succeed, it must first succeed on ground (b), which is to say that the 'music event' use (which I will call it, as shorthand) is not an element of a permanent mixed use, but is a discrete occurrence that temporarily displaces the usual use of the land when it happens.

27. Class B allows the use of any land for any purpose for not more than 28 days in total in any calendar year, with some exceptions. It also allows the provision on the land of any moveable structure for the purposes of the permitted use. Development is not however permitted by Class B if the land in question is a building or is within the curtilage of a building.
28. As to whether the 'music event' use is a separate use, the Council have concentrated at some length as to whether the music event use has taken place on land within the site falling within the curtilage of any buildings, which is to say to address the question whether permission is granted by Class B of the 2015 Order. What is missing from their analysis is whether the music event use properly forms part of the mixed use alleged or if it takes place on separate occasions amounting to a different temporary use.
29. The appellants refer to having hosted four music events in June 2019, and five each in July 2021, July 2022 and June 2023. This does not appear to be an exhaustive list, because the undated website extract supplied by the Council refers to an event in June, '5 dates in July and August', and another on 4 September. This suggests that the number of music events might exceed a handful but there is no suggestion that there have been more than 28 events in any calendar year.
30. Weighing in favour of these events being separate events is the history of obtaining 'temporary event' notices. Licensing laws limit the number of TENs that may be held on any particular premises, or obtained by any particular applicant, in the absence of a personal or premises licence. The clue is in the name: the premises are to be used for a one-off licensed event. Obviously the position as to licensing cannot be determinative of the planning position, but it does give some indication of these events being a departure from the usual use of the land.
31. Although there is some discussion by the parties of what 'curtilages' might exist within the site, there is no dissent from the proposition that the appeal site constitutes a single planning unit. One of the plots within it, plot 56, has no planting or laid ground that is in active use as an allotment plot. However the site as a whole appears overwhelmingly given over to the allotment use, with a number of terraced planting beds and so forth. In the absence of a music event, there appears no reason why the site could not revert to its lawful allotment use.
32. Until fairly recently a 'stage' was found towards the middle of the site. This was, say the appellants, used for a very limited number of music events but was not fit for purpose and has since been removed. The question arises whether the erection of this 'permanent' structure could have made it difficult or impossible for the site to revert realistically to its previous normal use as allotment gardens. If so, then this would be indicative of a permanent material change of use irrespective of the number of actual music events.
33. I have not been provided with any detailed photographs of the stage although its location was pointed out to me on site and the appellants have stated its dimensions to have been L280cm x W500cm x H220cm. A 'refreshments shed' is described as structure H, at the very top (south) of the site and is not subject to the enforcement notice. Its dimensions are given as L180cm x W 778cm x H241cm. Photographs are also supplied of a number of chairs laid out

towards the top of the site apparently facing the stage, but it is not clear whether these were taken on a day when a music event was taking place.

34. In the round, although the permanent presence of the stage and the 'refreshments shed' would have prevented those particular parts of the site from being put to any active use as allotments, I do not find that relative to the size of the site as a whole they would have been sufficient to have made it difficult or impossible for the site to have reverted to its previous normal use in between music events. The balance of the evidence before me is that the music events did take place as separate one-off occasions when the use of the land temporarily changed to that of a music venue from that of its usual underlying allotment use. In summary I do not consider that a mixed use of the site including a music event use as a primary component of that mix has occurred. Instead I consider that the music events were separate and temporary events.

Conclusion on ground (b)

35. It follows from the foregoing analysis that I do not find the breach of planning control as alleged in the notice to have occurred. The 'learning and skills educational centre' and the 'community facility for meetings and social events' have not happened, or not to the extent that would justify their description as principal components of a mixed use rather than as activities incidental to the ordinary use of the land as community allotments. The 'music event' use has happened, but not as a principal component of the mix as described. It has happened on discrete occasions during which the land use temporarily changed, subsequently reverting back to its underlying allotment use after each event.

Consequences for the notice

36. I therefore consider the consequences for the notice, and for the other facts and grounds of appeal. It is my general duty to put the notice in order where possible. Additionally, section 176 of the 1990 Act provides a power on appeal for me to correct any defect, error or misdescription in the notice, or to vary its terms, if I can be satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
37. The remainder of the appeal on ground (b) seeks to demonstrate that engineering operations to change the land levels to form a car park and drive have not occurred. These are said within the notice to constitute operational development in connection with and part and parcel of the alleged unauthorised uses. The officer's report appears clear that these elements, if they did happen, took place more than four years prior to the issue of the notice. To correct the notice, given my findings as to the use allegation, I should need to consider whether to reformulate the allegation to say that these were works of operational development unrelated to any material change of use.
38. The appeal on ground (c) seeks to show that the 'music event' use benefits from the Class B permission. To address that ground of appeal, I should need to correct the allegation to say that a material change of use had been made to use the land for 'music events' (and then to find whether or not they have benefitted from the Class B permission).

39. The appeal on ground (a) expressly seeks permission for a number of the buildings on the site, and the access gate and boundary fencing, with the concession made that permission is required. However, the consequence of my findings on ground (b) is that the buildings cannot have been constructed 'in connection with and being part and parcel of the unauthorised uses' because my finding on ground (b) is that the unauthorised mixed use alleged by the notice has not occurred. Again, it appears that some of these elements were in situ more than four years prior to the issuing of the notice.
40. Insofar as the buildings do not relate to an unauthorised change of use, the parties may have wished to make different cases in relation to their impact on the Green Belt, because the purposes for which the buildings are used is potentially relevant to this issue.
41. In the round I am left with no real choice but to quash the notice. To correct the allegation to reflect my findings on ground (b) in relation to the use, and hence to proceed to dispose of the other grounds of appeal, would undoubtedly cause prejudice to one or both parties. A ground (d) appeal has not been raised and this might well become relevant to the operational development aspects. The issue of Green Belt openness and purposes in relation to the operational development has been addressed by the parties through the prism of the alleged unauthorised use, which I have found not to exist, and those points might well have been put differently.
42. I should point out that my findings do not prevent the Council from re-visiting the question of enforcement in relation to those elements not disposed of by this decision.

Conclusion

43. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not need to be considered.

Formal Decision

44. The appeal is allowed, and the enforcement notice is quashed.

Laura Renaudon

INSPECTOR