



Appeal Decision

Site visit made on 20 February 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 May 2024

Appeal Ref: APP/K0425/C/22/3312087

Land at Swish Fibre Depot, Hooks Farm, Hooks Lane, Marlow Common, Buckinghamshire SL7 2DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Christopher Folley, Harleyford Estate Ltd. against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 5 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the Land to a mixed use comprising of agricultural use and B8 storage depot and integral to that use the stationing of portacabins.
 - The requirements of the notice are to:
 - 1) Cease the use of the Land for Use Class B8 (Storage and Distribution) purposes,
 - 2) Remove all materials, including portacabins, unrelated to the lawful agricultural use of the land,
 - 3) Remove all materials and debris resulting with complying with steps 1 to 2 if this Notice from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of requirement number 1 and substitution with
 - "1) With the exception of the building hatched black on the attached plan, cease the use of the Land for Use Class B8 (Storage and Distribution)",
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice
 - the deletion of the word "if" and substitution with the word "of" in requirement number 3.
2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

3. An application for costs was made by Buckinghamshire Council against Mr Christopher Folley, Harleyford Estate Ltd. This application is the subject of a separate Decision.

Preliminary Matter

4. Requirement number 3 contains a typographical error. I am satisfied that I can correct this without prejudice.

Ground (d)

5. This ground is that, at the time the enforcement notice was issued, it was too late to take enforcement action.
6. The appellant's case centres on the existing building to the northern extremity of the site, and the land around it. It is stated that this land and building has been in its current use for a period in excess of ten years and is therefore immune from enforcement action. While no evidence in this regard has been provided with the appeal, the appellant further states that an application for a certificate of lawful use is being prepared and will be submitted to the Council.
7. Since this was written, an application¹ has been submitted to, and subsequently granted by, the Council for a certificate of lawful use for an existing use of the building for non-agricultural use (Class B8 – Storage), together with an area of access to the building leading from the adjacent highway. The granting of this certificate conclusively proves that the building has been used for the purpose alleged in the Notice.
8. The Council has suggested that I amend the Notice to require that the building be omitted from the requirement to cease the use of the land for non-agricultural purposes. As the appellant has referred to the building being immune from action, I find that there would be no prejudice to any party in me doing so.
9. There is also reference by the appellant to the land around the building being used for storage purposes. The appellant also comments that consideration should be given to excluding the access to the site from the area of land to which the notice refers. However, there is no substantive evidence before me to support that these areas have been used for storage purposes for the requisite period and thus, I find that it would be appropriate to only exclude the building from the requirement to cease the use.
10. There is no contention that the remainder of the land has been used for storage purposes for a period in excess of ten years.
11. Therefore, as I set out above the ground (d) appeal succeeds in part, to the extent that it is too late to take enforcement action in respect of the existing building only; I shall vary the notice accordingly. The ground (d) appeal fails in respect of the remainder of the appeal site.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Martin Allen

INSPECTOR

¹ Council ref: 23/05476/CLE

Annex - Plan

This is the substituted plan, referred to in the decision above.

Scale: Not to Scale

