



Appeal Decisions

Inquiry held on 16, 17 & 19 April 2024

Site visit made on 17 April 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th May 2024

Appeal A Ref: APP/P0240/C/22/3299695

Appeal B Ref: APP/P0240/C/22/3299696

Land east of Warren Farm, Woburn Road, Millbrook, Bedford, Bedfordshire, MK45 2HY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Rye Demolition Limited against an enforcement notice issued by Central Bedfordshire Council. Appeal B is made by Rye Plant Hire Limited.
 - The notice, numbered CB/EN/19/0500, was issued on 27 April 2022.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use for use as open storage for the parking of HGVs and trailers, skips, containers, tyres, pipework, construction plant and associated equipment and parts and the siting of mobile offices, metal shipping containers, skips and the provision and the use of the land for the recovery and storage of broken motor vehicles and formation of a gravelled hardstanding area on the Land'.
 - The requirements of the notice are:
 1. To cease the use of the Land as open storage for the parking of HGVs and trailers, skips, containers, tyres, pipework, construction plant and associated equipment and parts, and the use of the Land for the recovery and storage of broken motor vehicles.
 2. To remove from the Land all mobile offices and metal shipping containers.
 3. To remove all HGVs and trailers, skips, containers, tyres, pipework, construction plant and associated equipment and parts, recovery vehicles and recovered motor vehicles from the Land.
 4. To break up and remove all hardstanding areas and re-instate the and [sic] to its former condition before the breach took place by levelling the ground with top soil and re-seeding with grass.
 - The periods for compliance with the requirements are:
 1. One calendar month in respect of requirement 1
 2. Six calendar months in respect of requirements 2-4.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) 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.
 - Appeal B 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.
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Decision

1. The enforcement notice is quashed.

Applications for costs

2. At the Inquiry an application for costs was made by Rye Demolition Limited and Rye Plant Hire Limited against Central Bedfordshire Council. That application is the subject of a separate Decision.

Preliminary Matters

3. As set out above, there are 2 appellants giving rise to 2 appeals on the same site and against the same enforcement notice. The grounds of appeal are consistent save for the ground (a) appeal, which is made by Rye Demolition Limited only. I have dealt with the appeals concurrently unless otherwise stated to avoid repetition.
4. Having initially withdrawn the ground (a) appeal, Rye Demolition Ltd. partially reinstated it, whereupon should the appellants succeed on either ground (c) or (d), then a ground (a) and deemed application for planning permission in relation to a portable building used as a welfare unit falls to be considered.

The Notice

5. Irrespective of the grounds of appeal that have been advanced, I have a duty to ensure that the Notice is in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act) to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council. If the Notice cannot be corrected, I must quash the Notice.
6. Section 173(1)(a) of the Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control. Prior to the Inquiry I wrote to the main parties in the appeals querying a number of matters in relation to the Notice. This included a request for views as to the extent of the planning unit and the primary uses taking place there.
7. The Notice alleges 2 uses. These are (i) storage associated with the Rye group operations (demolition, construction and plant hire) and (ii) a separate use of the recovery and storage of broken motor vehicles. Additionally, the siting of mobile offices, metal shipping containers and the formation of a hardstanding are referred to in the allegation as operational development.
8. The plan attached to the Notice includes a shared surfaced track leading from Woburn Road (A507) to the site entrance. The shared track continues along the southern and eastern boundaries of the site on the outside of the fence line. Although the appellants have a right of access over this, it does not form part of the planning unit.
9. I heard at the Inquiry that the appellants had concerns that the requirement to remove existing hardstanding areas within the Land subject of the Notice was unclear as to the extent it applied to the access road, or not. Although this is a failing to provide reasonable certainty in the Notice, the main parties agreed that none of the alleged uses or operational development took place there.

10. Having regard to those facts, I find a reduction in the area of the land subject to the Notice to remove those shared access routes would cause no injustice to either party. At the Inquiry, the Council provided a revised plan excluding the access track and showing the site (only) outlined in red. Accordingly, the Notice is amended by deleting the plan dated 21 April 2022 and its substitution with the plan submitted to the Inquiry, dated 16 April 2024. In addition to clarifying the correct planning unit, the change of plan would clarify the extent of hardstanding that the Council sought to be removed through the service of the Notice.
11. However, whereas the appellants refer to the primary uses as mainly storage, I heard at the Inquiry that storage only formed part of the activities taking place on the Land.
12. The appellants highlighted that the significant majority of employees involved in demolition, construction and plant hire contracting worked off-site where the plant, containers, skips and the like would be used. However, 4 employees were based at the site. This includes drivers of HGVs and smaller vehicles who load/unload items for transfer to and from sites elsewhere. Their activities would involve the loading/unloading of large-scale plant, containers, temporary buildings or other large items. I heard that this was sometimes facilitated by the use of specialist lifting equipment fitted to vehicles designed for that purpose.
13. Additionally, the appellants confirmed that some maintenance and repair of various vehicles (excluding Scania HGVs), plant and temporary buildings used in off-site contracts took place on the Land. It was also explained that sanitation and clean down of portable welfare facilities occurred there too.
14. Despite the appellants clarification that administrative and management functions of the business are undertaken elsewhere, and that plant hire was substantially restricted to contracts between Rye Plant Hire and Rye Demolition Ltd., I find the use of the Land lies beyond that of a simple storage function. As the only operational base for the companies' activities, I have little doubt that the particular nature, scale and the range of plant and equipment involved will require some specialist knowledge and experience to operate, move, repair and maintain it.
15. In consideration of those activities and site-based personnel to realise it, in my view, the cumulative effect of the activities taking place on the site are materially different to primary storage functions and, as acknowledged by the Council, could not normally be considered incidental to storage uses. Despite the description of the site's use in the Notice, the Council ultimately concluded that the site is used as the sole depot for a demolition, construction, and plant hire business. In my own view, the appellants' use of the land in association with those contracting businesses cannot accurately be described simply as storage. It falls outside any class defined by the Town and Country Planning (Use Classes) Order 1987 and is therefore a *sui generis* use.
16. In relation to the recovery and storage of broken motor vehicles, the appellant asserted that a vehicle evident in the Council's photographs when investigating the site prior to the service of the Notice was single occasion storage. I heard that this vehicle was awaiting assessment prior to being written off. However, by the appellants' own volition, it was conceded that the recovery vehicle was

owned by one of the companies and had been used in conjunction with a fledgling 'recovery vehicle transportation business' - an aspiration by a relative of the appellants. Although the appellants confirmed that this business did not persist, on the evidence before me, it is unsurprising that that separate use was alleged in the Notice. As a distinct and separate use, that is not physically separate to the contracting businesses, it then resulted in a mixed use of the planning unit.

17. Taking the above matters together, I find the mixed-use allegation in the Notice to be incorrect. Moreover, it is not possible to correct it without causing injustice to the main parties.
18. The appellants' case substantively relied on interpretation of a claimed former storage use of the site. Whether of substance or not, this approach directly related to the allegation in the Notice. Whilst it may have been open to the appellants to rely on the same planning history had the allegation included a contractor's yard and recovery business, had it done so, the arguments for the Inquiry would have been different from those made as to the materiality or merits of a change of use.
19. Despite similarities in some activities, the broader use of the site as a multi-faceted contractors' and recovery yard has broader planning implications than a purely storage use. The widening of the allegation would potentially introduce additional considerations that the Council, their consultees or third parties would not necessarily have had chance to fully consider or comment on given the restricted description in the Notice. It could affect the arguments made out on the remaining grounds and cause significant injustice on the Council's part.
20. Furthermore, it may have had a direct effect on the appellants' decision on whether or not to mount a comprehensive ground (a) appeal. It has restricted the nature of development that could be sought under that ground. Injustice would arise to the appellants as a planning permission for what was alleged in the Notice would not permit the land use that was actually taking place when the Notice was served.
21. I heard that other minor corrections or variations to the Notice could be made without injustice. This included amendments to the requirements and timescales for their implementation in order to provide a logical and consistent approach to the document. However, consequent to my finding that the allegation is incorrect, I shall not interfere so far as this may prejudice any subsequent cases (if made) in the event a further notice is served.

Conclusion

22. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. Furthermore, I am unable to correct the Notice in accordance with my powers under s176(1)(a) of the Act without them resulting in injustice to any party. The enforcement notice is invalid and will be quashed.
23. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of s171B(4) of the Act.

24. In the circumstances, the appeals on the grounds (a), (b), (c), (d), (f) and (g) set out in s174(2) of the Act and the application for planning permission deemed to have been made under s177(5) do not fall to be considered.

R Hitchcock

INSPECTOR

Appendix 1

List of those who have appealed:

Reference	Case Reference	Appellant
Appeal A	APP/P0240/C/22/3299695	Rye Demolition Limited
Appeal B	APP/P0240/C/22/3299696	Rye Plant Hire Limited (Rye Demolition Limited)

APPEARANCES

FOR THE APPELLANT:

Michael Krantz Solicitor

Simon Barlow Appellant (Rye Demolition and Rye Plant Hire)

Roy Alan Russell Site owner

FOR THE LOCAL PLANNING AUTHORITY:

Charles Streeten Counsel

Rebecca Rousell Principal Enforcement Officer

INTERESTED PARTIES:

Cllr. Susan Clinch

Cllr. Mark Smith

Christopher Shrimpton for Millbrook Parish Meeting

DOCUMENTS PROVIDED AT THE INQUIRY:

Statement of Mr Shrimpton on behalf of Millbrook Parish Meeting

Statement of Cllrs. Clinch and Smith

Appeal decision Ref. APP/T0355/W/20/3248271

PLANS:

Revised plan 'Plot 9, Warren Farm' Printed 2024-04-16

END.