



Appeal Decision

Site visit made on 28 February 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal Ref: APP/E2001/C/23/3317346

Land laying to the west of Hull Road, Woodmansey, East Riding of Yorkshire HU17 0SY

- 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 Mrs Patricia Wilson against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 01 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land to purposes other than for the lawful use of the land for agricultural, to mixed uses including storage, the repair/ renovation of tractors and machinery and siting of vehicles, containers and lorry bodies an operational development consisting of the erection of a building and the creation of a new access track and hardstanding to facilitate the unauthorised use.
 - The requirements of the notice are:
 - 1) Cease the use of the Land for purposes other than for agriculture; and
 - 2) Remove from the Land the new building and the yellow shipping container both identified in photograph (1), and the lorry body, forklift truck and trailers; and
 - 3) Remove from the Land all machinery, tools, vehicles and equipment not used or needed for the lawful agricultural use of the Land; and
 - 4) Remove from the Land building materials, tyres, pallets, scrap metal, firewood, fencing, crates, and gas bottles, and all other non agricultural miscellaneous items from the Land together with all debris and waste materials arising from compliance with the steps required by this Notice; and
 - 5) Remove from the Land the extended chalk access road (identified edged in pink on photograph 2); and
 - 6) Remove from the Land the hardstanding (identified edged in pink on photograph 3); and
 - 7) Following completion of steps 2 through to 6 prepare and cultivate the area where the hardstanding and chalk have been removed ready for grass seeding in accordance with best practice, then reseed with an agricultural grass seed mix in accordance with best practice.
 - The period for compliance with the requirements is six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. In addition to this appeal made against the Council's decision to issue an enforcement notice, another appeal was made by the appellant against the refusal of the Council to grant planning permission for the building which is subject to the enforcement notice and the erection of hardstanding (the planning appeal)¹. Due to the timing of the two appeals, they were not 'linked' as is sometimes the case with enforcement notice appeals and planning appeals.
3. An unaccompanied site visit was made in relation to the planning appeal on 29 March 2023. However, in preparation for my site visit in relation to the enforcement appeal, which was on 28 February 2024, I noticed that no decision appeared to have been issued in relation to the planning appeal. Upon making further enquiries, the Inspector in relation to the planning appeal had submitted her decision to the administrative team within the Inspectorate in May 2023, with instructions that it should be issued. The fact that the decision wasn't issued was down to an administrative error which only became apparent when I made enquiries as to the situation.
4. Consequently, the planning appeal decision was then issued on 01 March 2024. Given that the planning appeal related to the same site and building, albeit for a slightly different nature of development, I subsequently gave the parties the opportunity to comment on the implications of the planning decision for the enforcement notice appeal. I have taken the responses into account in reaching my decision.
5. At the time of my visit there was little sign of any activity on the land in question. The containers, lorry bodies and all of the machinery not required for an agricultural purpose, as referred to in the enforcement notice, had been removed. The building and the access track remained with a few items of agricultural appearance within the structure itself.

The Appeal on Ground (d)

6. An appeal on ground (d) is made on the basis that at the time the notice was served it was too late for the Council to take action against the matters alleged. That relates to the statutory time limits for taking enforcement action set out under section 171B of the Town and Country Planning Act 1990. As things stood at the time the enforcement notice was served, s171B applied different time limits for taking enforcement action depending on the nature of the breach².
7. In relation to operational development, building and engineering works, the period was four years from the date on which the breach was substantially completed, under s171B(1). Where a material change of use has occurred the correct period to establish immunity from enforcement action is ten years from the date of the breach, under s171B(3). However, notwithstanding those statutory time limits, where ancillary structures or works have been erected to

¹ Appeal reference APP/E2001/W/3312614

² Section 115 of the Levelling Up & Regeneration Act has altered the time limit such that the period for taking action for both material change of use and operational development is now 10 years. However, those amendments do not apply to breaches of control that occurred before 25 April 2024, as is the case here.

facilitate a material change of use, the courts have held that enforcement action may also be taken against those works within a ten-year period³.

8. In order for that to be the case, the operational development must be incidental or ancillary to the material change of use, as opposed to being fundamental to that change of use or a separate development in its own right.
9. In this instance, the red line plan relating to the enforcement notice encompasses the entirety of the field, with the exception of the access point onto Minster Way which is outside of the red line of the plan and not affected by the notice. The alleged breach refers to the track leading from that access around the perimeter of the field and up to the larger area of hardstanding where the buildings are situated. Two buildings are located on the site, a pre-existing building which would appear to have been in situ for quite a number of years (the existing building) and the new open fronted structure which is referred to in the enforcement notice (the new building).
10. The onus rests with an appellant to make their case in respect of an appeal on ground (d) and the relevant test is the balance of probability. The appellant accepts that the new building is not immune from enforcement action under ground (d). The appellant has suggested that the existing building is in non-agricultural use and has been for such a period as to be immune from enforcement proceedings. However, no documentary evidence to support that claim has been provided and the statement does not specify what the actual use of the building is. I asked to look inside at the accompanied site visit but the building was locked such that I could not gain access. As such, the case that the existing building has an established use through the passage of time is not made out.
11. Beyond that, relatively little documentary evidence relating to the activities on the land or the associated works has been provided, save for some overhead photographs. The image purportedly from May 2016 shows the access point onto Minster Way and the pre-existing building on site, surrounded by various 'random items'⁴. The image is not sufficient to work out what activity was actually taking place at that point in time or whether any material change of use had occurred.
12. Subsequent images appear to show the access track being completed in stages, with the north-south leg shown in July 2017 and then the west-east leg being shown in July 2019. An area corresponding to the area of hardstanding can also be seen in the July 2019 image but it is of a darker colour than the remainder of the access track which may be an indication that work was still progressing. The overhead image in Photograph 3 in the enforcement notice appears to show it in its finished state with what appears to be a more defined surface.
13. It is also notable that the previous 'random items' have been cleared from the site by the time of the 2019 image. That would appear to indicate that a notable change in the use of the site occurred at about the time the access track, hardstanding and new building were erected. There is no evidence that the works were erected in relation to any other use or for the purposes of agriculture and it would appear that the purpose of the access track was to

³ As set out at paragraph 7.4 of the Council's Statement of Case

⁴ Paragraph 6 of Appellant's Statement of Case

facilitate access to the hardstanding where the new building and associated containers and materials were stored. In other words, the track was erected to facilitate the material change of use on the balance of probability.

14. The appellant has also suggested that much of the hardstanding should be considered immune from enforcement proceedings on the basis of the photographic evidence which depicts that some form of surface may have been present previously across much of the area in question. However, if there was a previous hardstanding it is overgrown to a state where it is hard to discern on the photographs and the evidence points to a new material operation in the formation of the track and hardstanding, as opposed to the repair of an existing feature.
15. Overall, I can only go on the evidence before me which is somewhat lacking. What evidence there is points to the fact that the access track and hardstanding was erected in association with and to facilitate the material change of use of the land, as alleged in the enforcement notice. It was incidental to that material change of use and, having regard to established caselaw, it is appropriate for the Council to seek to remove those works within a ten-year period from the date of the breach. Even by the appellant's own submission the works have not been in place for ten years and it follows that the appeal on ground (d) must fail.

The Appeal on Ground (a)

16. An appeal on ground (a) is made on the basis that planning permission should be granted for the matters stated in the enforcement notice. In other words, the basis of an appeal is predicated on the fact that the matters alleged in the notice have occurred and planning permission is being sought for those matters. There is no dispute that the material change of use alleged in the notice occurred. As set out above, it is probable that the operational development that took place was in association with that unauthorised use.
17. The appellant, perhaps under a misapprehension as to the limitations of an appeal on ground (a), does not seek planning permission for the matters alleged in the breach which relate to the use of the land for storage, the repair/renovation of tractors and machinery and the siting of vehicles, containers and lorry bodies, with the operational development being associated with that use. Rather, she seeks permission for the building, hardstanding and access track for agricultural purposes.
18. Fundamentally, that is a different form of development to that alleged in the enforcement notice. Under the terms of s177(1)(a) of the Act I may only grant planning permission for the matters stated in the enforcement notice as constituting the breach of control, whether in relation to the whole or part of those matters. What the appellant is seeking is development for a different purpose altogether. It is not open to me to grant planning permission for that use/ development within the narrow confines of an appeal under ground (a). The correct method of seeking to secure permission for an alternative use and the erection of buildings for an alternative purpose than that specified in the notice would be to apply to the Council for planning permission to the Council.
19. In this instance, the appellant has already applied for permission for the erection and use of the building for agricultural purposes and the associated hardstanding. That application was refused by the Council and has now been

dismissed at appeal, as detailed above. It is not for me to revisit that decision. The appellant maintains that I should attach little weight to it on account of the fact that the previous Inspector only undertook an unaccompanied visit and that she was incorrect regarding the use of the existing building.

20. However, the site is clearly visible from the public domain and very little information appears to have been submitted relating to the existing building, as set out above. Regardless of that it is simply not open to me to consider a grant of planning permission under ground (a) for a different form of development than that specified in the enforcement notice. No case has been made that permission should be granted for the building or hardstanding in connection with the unauthorised material change of use that took place. It follows that the appeal on ground (a) should fail and I shall refuse to grant planning permission for the development which constitutes the breach of planning control.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Chris Preston

INSPECTOR