



Appeal Decision

Site visit made on 7 June 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/G2713/C/23/3318058

Land at Paddock House, Bagby, Thirsk, North Yorkshire, YO7 2PH

- 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 Mr Andrew Keith Abbott against an enforcement notice issued by Hambleton District Council.
 - The enforcement notice was issued on 26 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for agriculture to a builder's storage yard.
 - The requirements of the notice are i) cease the use of the land as a builder's storage yard and ii) remove from the land all items not associated with agriculture which includes but is not limited to the following: breeze block bricks, telehandlers, single seater excavator, bricks, rubble, scaffolding poles, scaffolding wooden boards.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. The notice was issued by Hambleton District Council on 26 January 2023. This is detailed in the banner heading above. On 1 April 2023, a new unitary Council was formed for North Yorkshire. This new Council replaces seven former district and borough Councils including Hambleton District Council.

Reasons

Ground (d) appeal

3. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probabilities.
4. The appellant's claim under ground (d) is that a material change of use of the land from an agricultural to a builder's storage yard use has taken place for a

continuous ten year period and hence is lawful by virtue of section 171B(3) of the Act.

5. The appellant claims that use of the land as a builder's storage yard commenced in 2007 and that by 2017 it was lawful. While there are statements from individuals (referred to by the appellant as statements of truth) indicating that they visited the site and/or picked up or dropped off building materials between 2007 and when the notice was issued, these letters are not in the form of statutory declarations and, furthermore, are not in any event corroborated with any specific dates, dated photographs or any other conclusive and objective information. In this context, I am not able to afford the letters significant weight in evidential terms.
6. The appellant has submitted a Google Street View image from 'May 2010'. While what appears to be a container or lorry back is stored on the land and a small pile of material near the gate, there is no compelling evidence before me to suggest that this was used in connection with a material change of use of the land to a builder's yard use. The container/lorry back and pile of material occupies a very small portion of land and even if such items were proven to have been used in connection with the appellant's business, there is nothing in the image itself to indicate that a material change of use of the land had taken place at this time. Furthermore, and, in any event, in the absence of photographs showing the container/lorry back in existence on the land for ten years (i.e., the container/lorry back does not appear to be clearly visible in the 2018 Google Earth image submitted by the appellant), I do not find that the appellant has sufficiently demonstrated a material change of the land to a builder's storage use at this time.
7. The Council has submitted several dated Google aerial images from 2012 to 2021. In my judgement, the aerial images in 2012 and 2015 do not show, with sufficient clarity, evidence of the storage of machinery or materials associated with use of the land as a builder's yard. Indeed, the appeal site has the appearance of being essentially devoid of machinery and materials at this time. The 2018 aerial image appears to show what might be the roof of a building, but the evidence before me does not sufficiently or conclusively demonstrate that any such building or other structure was used in connection with a builder's storage yard use at this time. Indeed, it is conceivable that it could have been used in connection with use of the paddock for agricultural purposes.
8. I accept that the photographs taken by the planning officer for the Council in 2015 do not show all the appeal site. The appellant claims that at this time '*machines etc*' would be stored to the left of the photograph. I accept that the 2015 photograph does not show the whole of the land to which this appeal relates. Nonetheless, it does show some of the land and, in my judgement, it does not show the storage of building materials on a significant part of it, including that which is close to the entrance gate.
9. I accept that the Council's Google earth image dated 2015 is not of a high quality. Nonetheless, it is not possible to see any stored machinery or materials within such an image. I find that the 2015 planning officer photographs, coupled with the 2015 Google earth image, casts sufficient doubt about the appellant's claim that the land was being used as a builder's storage yard at this time. Even if some items were intermittently being stored on the land, the

evidence does not support the appellant's claim that a material change in the use of the land to a builder's storage use had occurred at this time. The written statement of John Swales states that stored items '*come and go although some are present for a very long time*'. The above evidence does not, in my judgement, demonstrate the storage of items '*for a very long time*' and certainly not on a continuous ten-years basis.

10. Even if what is shown on the 2018 Google earth image were to amount to the storage of some sort of materials and/or the erection of a building on the land associated with a builder's storage use, it would have been incumbent on the appellant to have demonstrated how and why this had led to a material change of use of the land at this time. Neither the 2018 Google earth image, nor the written evidence from the appellant and visitors to the site, demonstrate conclusively and unambiguously that a material change of use of the land had taken place at this time.
11. On the evidence that is before me, and, on the balance of probabilities, for the reasons outlined above I do not find that the appellant has proven a continuous ten-years material change of use of the land to a builders' storage yard for the period 2007 to 2017. While it is conceivable that items such as scaffolding poles may have been occasionally stored on the land in the past in connection with the appellant's business, continuous ten-years use has not been conclusively proven in this regard.
12. The appellant's Google Earth aerial photograph does appear to show an increase in some kind of stored materials on the land in 2020. It is possible, therefore, that the land started to be used for storing various items at this time. On the evidence that is before me, however, I cannot be certain if the degree of storage activity was such that it amounted to a material change of use of the land at this time.
13. The claim about ten years continuous use also needs to be considered in the context of the written evidence submitted by the occupiers of Greenfield House which includes photographs showing the appeal site '*in the summer of 2021*'. The appellant does not dispute that the photograph was taken at this time and indeed the occupiers of Greenfield House state that it was taken when they first moved into the property. This photograph shows most of the appeal site, and what can be seen is a site which is being used primarily for agricultural purposes. Indeed, there are many sheep grazing on the whole of the appeal land and including that part to the north and close to the access gate. This evidence casts doubt about any claim that a change of use of the land as a builder's storage yard had commenced or continued at this time.
14. In contrast to the above, the occupiers of Greenfield House have also submitted photographs taken in '*the months following summer 2021*' and showing the storage of piles of bricks, two JCB diggers, scaffolding poles and boards, pipes, breezeblocks, plastic crates, and builder's rubble. There is a white van at the entrance to the site loaded with building rubble. The extent of the stored materials and machinery on the land is significant and, in my judgement, is such that the character of the activity on the land was such that a material change in the use of the land had occurred at this time.
15. In my judgement, the evidence indicates that perhaps from 2020, and certainly sometime after '*summer 2021*', the use of the land changed materially to use as a builder's storage yard. While I cannot be certain of the actual date when

the material change of use occurred (i.e., between 2020 and 2021), I nonetheless conclude that on the balance of probabilities the weight of evidence does not precisely and unambiguously demonstrate that a material change of use of the land from agriculture to a builder's storage use has taken place for a continuous period of ten years. I therefore conclude that the ground (d) appeal fails.

Ground (g) appeal

16. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
17. The compliance period in the notice is three months. The appellant asserts that nine months is needed to comply with the requirements of the notice which would include finding alternative premises to store items that are currently on the land.
18. I acknowledge the appellant's efforts to search for alternative sites for sale and within a radius of 15 miles of the appeal site. The appellant states that these sites were not suitable. It is not clear why all the identified available sites were not suitable but, in any event, the search was carried out on 8 June 2023. It may therefore be the case that there are now alternative premises available. Furthermore, it is noteworthy that only sites '*for sale*' as distinct from possible letting were considered by the appellant.
19. In the context of the above, I find that a period of three months is reasonable to ensure compliance with the requirements of the notice. This strikes an appropriate balance between removing stored items, finding alternative premises, and bringing the harmful unauthorised use to an end in the public interest. I therefore conclude that the ground (g) appeal fails.

Conclusion

20. For the reasons given above, I consider that the appeal should not succeed.

D Hartley

INSPECTOR