



Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/T4210/C/23/3324991

Land at to the East of Mill Street, Tottington, Bury

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act). The appeal is made by Mr Simon Hall against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The notice was issued on 22 May 2023.
 - The breach of planning control as alleged in the notice is the material change of use of the land from open countryside to residential use through the erection of timber buildings, a upvc conservatory and garden/storage structures for residential purposes.
 - The requirements of the notice are to:
 - a) Cease the use of the land for residential purposes
 - b) Demolish and permanently remove all timber building the upvc conservatory and all garden/storage structures from the land.
 - c) Following demolition required by step 5(b) above, remove all resulting materials from the Land and reinstate to its former condition.
 - The period for compliance with the requirements is: 6 calendar months of this Notice.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. The appeal site is accessed off Mill Street, via a footpath which also provides access to a number of buildings¹ which are located outside the appeal site, part of a field and an area used for the storage of plants ('the wider site'). The appeal site incorporates the remainder of the field and the remainder of the area used (at the time of my visit) for the storage of plants. A metal gate provides access to an area which comprises a number of timber buildings. During my visit I was able to see inside each of the buildings. Two of the buildings were being used for human habitation, with other buildings being used for storage or the keeping of animals (cats and chickens). A polytunnel had also been erected for the growing of plants.
3. The appellant does not dispute they are living at the site, or that they have erected a number of buildings to facilitate their residential use of the land. The appellant states they first rented the site solely to home their various animals and after 6 months, started living there mainly to protect the animals at night. The appellant states that two thirds of their buildings are solely to house animals, and this is broadly consistent with what I saw on site.
4. Section 55 (1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any

¹ Which at the time of my visit included a building which accommodated ducks, a stable and a book library.

material change in the use of any buildings or other land. The notice appears to conflate the two limbs of development, alleging a material change of use to residential use **through the** (my emphasis) erection of timber buildings, a uPVC conservatory and garden/storage structures.

5. The reasons for issuing the notice state that the breach of planning control has occurred within the last ten years², rather than four, which would be the immunity period for operational development in this case³. This supports the position that the notice is alleging a material change of use rather than operational development. However, it is clear from the Council's reasons for taking enforcement action that it is concerned with the erection of the buildings and within its requirements, the Council requires the buildings to be removed from the land.
6. Although a notice may require ancillary or incidental works which were carried out to facilitate a material change of use to be removed, this does not extend to operational development which is fundamental to or causative of the change of use (and which is therefore not ancillary). In this case, the erection of buildings for human habitation is a separate development which, in my view, should be identified separately within the enforcement notice.
7. I have considered whether it would be possible to correct the notice so that the allegation explicitly refers to the operational development. However, it is not clear, from the four corners of the notice, which buildings the Council is concerned with. The Council suggests in its statement that there are 8 structures on the site, 4 of which are either occupied or have been occupied and 4 of which are used for storage or animal husbandry. The appellant states there are only 7 buildings on site.
8. The enforcement notice refers to 'timber buildings, a upvc conservatory and garden/storage structures **for residential purposes**' (my emphasis). The appellant disputes that all the structures are used for residential purposes, with some being used solely to house animals. It is therefore not clear that the appellant would know what they have to do to comply with the notice.
9. Furthermore, were I to correct the notice to refer to operational development, it would also be necessary to correct the time limit set out in section 4 of the notice, so that it refers to four years for the buildings. The appellant may have wished to advance a case under ground (d), and so correcting the notice in this way would cause the appellant injustice.
10. I have also considered whether it would be possible to correct the notice to just refer to the material change of use and delete requirements (b) and (c). However, there are also difficulties with the material change of use allegation, which I shall discuss below.
11. While an enforcement notice does not need to be aimed at the whole of the planning unit, when considering whether a material change of use has occurred, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, unless a smaller area can be

² Section 171B(3) of the Act.

³ Section 171B(1) of the Act.

identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

12. From the evidence and from my inspection of the site, it appears the unit of occupation goes beyond the red line boundary identified within the enforcement notice and includes the area of land between the appeal site and Tower Farm referred to above (the wider site). Although a metal gate provides some delineation, it does not coincide with the red line boundary of the site. Furthermore, the appellant clearly uses the entire site for the keeping of animals, amongst other things. The Council also mentions there being electricity and water 'extended' from the stable block. In my view, the appeal site and 'the wider site' comprise a single planning unit.
13. Both the appellant and the Council refer to the presence of animals within the appeal site. Indeed, the appellant refers to the site as an 'animal sanctuary' and a 'small farm' and an interested party refers to the appellant having 'many animals on the land'. In the Council's statement, the officer describes a visit on 22 November 2022, during which they saw a number of sheds and shacks used for storage and housing animals (a dog and a large number of black cats). The appellant suggests there are around 27 or 28 cats at the site⁴ and this is broadly consistent with what I saw on site.
14. While the appellant states they do not wish the 'sanctuary' or animals to be mentioned, an enforcement notice should state fairly, what the appellant has done wrong and what they must do to remedy it. Although the keeping of cats in a residential premises is not unusual, the number of cats being housed at the site greatly exceeds that which would be found at a typical residential dwelling. Furthermore, a number of buildings appear to be used solely for the keeping of cats. The keeping of so many cats is likely to generate noise, odour and waste which is not typical of a residential dwelling. This is not, in my view, incidental to the residential use of the buildings but is a primary use in its own right and should be identified in the allegation.
15. In its response to ground (g), the Council also confirms the introduction of assorted livestock, including the 'recent introduction of chickens'. It is unclear from the Council's statement when it considers the 'assorted livestock' was introduced to the site. The appellant suggests the Officer was told the animals on site included ducks and chickens on their visit in November 2022. Reference is also made to the selling of chicken and duck eggs, which is stated to have been in place for the 'last three years'.
16. The Act states "agriculture" includes horticulture...the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land)... The use of the land for the keeping of chickens and ducks (albeit the ducks were located on land outside the red line boundary during my site visit) is likely to be an agricultural use and the selling of their eggs ancillary to that use. The growing of plants is also likely to be an agricultural use and the selling of the plants grown, ancillary to that use.
17. There is also a stable located outside of the red line boundary (but within the wider site) and a field (or paddock) which is also partly within the appeal site, which is likely to be used for the exercising of horses. Although horses grazing

⁴ Reference is also made to 33 rescued cats in the appellant's initial documents.

the land could be considered an agricultural use, I consider it likely the stables are comprised within the same planning unit as the land identified in the red line boundary.

18. Adjacent to the stables is a building with a poster indicating it is a 'free book library', 'Everyday 10am to 4pm'. It appears, from the evidence, that the site is accessed by members of the public. Although a residential property may receive visitors from a range of individuals, the number of visitors suggested to have been to the site is significantly different to that I would expect at a residential dwelling. It is not clear whether the book library was *in situ* by the date of issue of the enforcement notice, or the extent to which the site was accessed by members of the public.
19. I consider it likely, on the evidence before me and from my inspection of the site, that the planning unit comprises a mixed use of residential, the keeping of cats, agriculture and equestrian. There is ambiguity as to whether the wider site included the book library or the extent to which it was used by members of the public by the date of issue of the enforcement notice and therefore whether the mixed use should also refer to these elements.
20. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities. I have considered whether it would be possible to correct the notice to reflect the activities that were occurring by the date of issue of the enforcement notice. However, given the ambiguity above, it is not clear precisely what this should include. Furthermore, it is not clear what the implication would be in terms of the different buildings on site, or the grounds of appeal which the appellant would have chosen to appeal on.
21. For example, the appellant may have chosen to appeal under ground (a) in respect of those buildings which have been erected solely for the keeping of livestock, since buildings for agriculture and forestry are identified as exceptions within paragraph 154 of the Framework for considering the construction of new buildings as inappropriate in the Green Belt. It is also not clear what the appellant's case would have been in respect of the keeping of cats, or the equestrian use. Correcting the notice to refer to a mixed use would therefore cause the appellant injustice.
22. Given the ambiguity regarding the precise mix of uses taking place within the planning unit at the time the notice was issued, I have considered whether it would be appropriate to change the appeal procedure to enable discussion to take place. However, given the significant concerns I have regarding the notice, I consider there would be little merit in changing the procedure if the notice is likely to be quashed anyway.
23. The allegation and requirements are broadly stated and so, I do not consider the notice to be a nullity. However, the allegation conflates material change of use and operational development and does not identify that it is in a mixed use, nor does it identify all the different components of the mixed use. For the reasons given above, I have concluded that the notice cannot be corrected without causing injustice to the appellant and is therefore invalid beyond correction.

Conclusion

24. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
25. In these circumstances, the appeal on the grounds set out in section 174(2)(b) and (g) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR