



Appeal Decision

Site visit made on 6 August 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Appeal Ref: APP/A1910/C/23/3317404

Land lying to the south east of Cupid Green Lane, Hemel Hempstead, Hertfordshire, HP2 6HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Igor Josan against an enforcement notice issued by Dacorum Borough Council.
 - The notice was issued on 16 February 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised change of use from agricultural to carpentry business and unauthorised erection of miscellaneous outbuildings within the Green Belt'.
 - The requirements of the notice are to: 1. Demolish all structures on the site. 2. Remove all materials from the demolition of the structures from the land. 3. Clear the land and reinstate to its original agricultural field condition.
 - The period for compliance with the requirements in step 1 is four months, for steps 2 and 3 it is: seven months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.
-

Decision

1. The enforcement notice is quashed.

Background and Preliminary Matters

2. The site forms part of a larger field which has been subdivided into numerous plots. For clarity, the specific site shown on the Notice plans is referred to as Plot G in some of the Council's correspondence.
3. Pursuant to an email from the Council, of 1 March 2023 (10.49), the Council's reference stated on the Notice was identified as incorrect. The correct reference was given as: E/20/00157/NAP.

The Notice and ground (b)

4. Inspectors have a duty to try to get notices 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.
5. The site identified in the Notice includes a number of buildings set about a kept grassed area. The Land is substantially bordered by post and rail timber

- fencing. The allegation in the Notice alleges a material change of use from agriculture to a single use as a carpentry business.
6. The site has been the subject of a number of planning applications. On 4 May 2020, planning permission was granted for the construction of horticultural polytunnels, agricultural storage building and boundary fence. On identifying that the approved development had not been implemented entirely in accordance with the terms and conditions of that planning permission, the Council sought regularisation of the development carried out.
 7. A second application, reference 21/02331/FUL, for the construction of a polytunnel, agricultural storage building, livestock shed, a chicken coop and associated works and relocation of entrance gate was refused by the Council. The subsequent appeal decision¹ clarified that the growing of items within the polytunnel, as constructed, and housing of chickens for egg production would fall within the s336 of the Act definition of 'agriculture'.
 8. At the time of my site inspection, tomato growing was occurring in the building along the site's north-western boundary and chickens were present in a purpose-built building towards the rear of the site. Both are visible in the Council's photos from January 2023 (prior to the service of the Notice).
 9. In consideration of an alleged material change of use of land, Bridge J in Burdle² highlighted 3 broad categories of distinction in considering the relevant planning unit. These are:
 - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
 - 2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
 10. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
 11. In this instance, it is clear that there were separate, unrelated activities taking place. However, a generator housing (wired to the carpentry workshop) is integrated with the chicken coop structure. The use of the kept grass area is unclear but, as with the site access, potentially serves both uses. At the time of my site visit some egg storage, albeit minor, was observed in the building being used as a carpentry workshop. It is not therefore possible to establish clear physical and functional separation between the uses.
 12. As such, the Land identified in the Notice appears as a single unit of occupation in a mixed use. Where there is more than one primary use taking place on a planning unit, the Notice should refer to all uses taking place. It is established in caselaw³ that in those circumstances it is not open to the Council to decouple a mixed-use taking place within a single planning unit.

¹ APP/A1910/W/22/3290318

² Burdle & Williams v SSE & New Forest RDC [1972] 1 WLR 1207

³ R (oao East Sussex CC) v SSCLG & Robins & Robins [2009] EWHC 3841 (Admin)

13. In practice, this effectively prevents any correction of the Notice by reduction of the area of Land subject of its requirements. Accordingly, the absence of reference to the primary use of agriculture as an element of the site's mixed use is a flaw in the Notice.
14. The misdescription in the allegation restricts the appellant's ground (a) appeal. Furthermore, I have little doubt that correction of the Notice by extension of the allegation would have a bearing on the cases of both the appellant and the Council as made out for the purposes of the ground (a) appeal. Accordingly, it would lead to injustice to one, or both, parties.
15. Moreover, a correction of the allegation may require some amendment of the requirements in the Notice. Being mindful that the Notice seeks removal of all structures from the site, some of which may serve single or multiple uses (potentially including agriculture), and that planning permission has previously been granted for agricultural buildings there, this reinforces my view that injustice would arise if the allegation were corrected.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice fails to specify with sufficient clarity the alleged breach of planning control. The matter alleged in the Notice has not occurred as stated and the appeal on ground (b) therefore succeeds. Furthermore, I am unable to make the necessary corrections to the Notice without them resulting in injustice to any party. The enforcement notice is invalid and will be quashed.
17. 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.
18. In the circumstances, the appeal on the ground (a) as set out in s174(2) of the Act and the application for planning permission deemed to have been made under s177(5) of the Act do not fall to be considered.

R Hitchcock

INSPECTOR