



Appeal Decision

Hearing held on 21, 22 & 23 May 2024

Site visit made on 21 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2024

Appeal Ref: APP/U3100/C/23/3335908

**Land at Former Coal Yard, Thrupp Lane, Radley, Abingdon, Oxfordshire
OX14 3NG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Oxford Skip Hire Ltd against an enforcement notice issued by Oxfordshire County Council.
- The notice was issued on 30 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, a material change in the use of the 'Land' from a coal yard to the importation, storage, processing, and transfer of waste material (the 'unauthorised waste use'), the parking of vehicles and storage of plant, machinery, containers, skips and vehicles associated with the unauthorised waste use, and operational development comprising the erection of a fixed canopy building covering the unauthorised waste sorting area, the erection of a portakabin style office/facilities building, and the siting of paraphernalia associated with the unauthorised waste use.
- The requirements of the notice are to:
 - i. Step 1. Cease the use of the Land, outlined Red on the attached plan, for the following activities:-
 - Importation, storage, processing, and transfer of imported waste material (the unauthorised waste use), save for any processing and transfer of imported waste material involved in complying with 'Step 3'.
 - ii. Step 2. Cease the use of the Land, outlined Red on the attached plan, for the following activities;
 - Storage of plant, machinery, vehicles, containers and skips associated with the unauthorised waste use
 - Parking of vehicles associated with the unauthorised waste use.
 - iii. Step 3 Remove from the Land, outlined Red on the attached plan, all imported waste material
 - iv. Step 4 Remove from the Land, outlined Red on the attached plan, all plant, machinery, vehicles, skips, and containers associated with the Importation, storage, processing, and transfer of waste material.
 - v. Step 5 Remove the Portakabin style site office/facilities building within the area shaded blue from the Land outlined Red on the attached plan.
 - vi. Step 6 Remove the fixed canopy building covering the unauthorised waste sorting area, along with the associated ISO containers, and any anchoring attachments within the area shaded orange from the Land outlined Red on the attached plan.
 - vii. Step 7 Remove any paraphernalia associated with the elements of the unauthorised waste use from the Land outlined Red on the attached plan.
- The periods for compliance with the requirements are:
 - Step 1: One (1) day.
 - Steps 2, 3 and 4: 3 (three) months.
 - Steps 5, 6 and 7: 4 (four) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.

Decision

1. The enforcement notice is quashed.

Applications for costs

2. Applications for costs have been made by the appellant and the Council. These applications are the subject of separate decisions.

Matters concerning the notice

3. The appeal site forms part of a wider site which was previously a coal yard (the former coal yard) and is currently occupied by a range of uses, including Manor Mix Concrete, Cool Trailers, N Johnson Motor Company and H&S Sheds and Fencing. I adjourned early on in the Hearing to carry out a site visit.
4. The land to which the enforcement notice relates includes a substantial part of the former coal yard, including the access road to the former coal yard, a substantial strip of land with a weighbridge, brick building (weighbridge office), storage container and scrap metal, which leads to an area used for the handling and storage of waste. Sizable gates, with a keypad entry system secure the former coal yard. Beyond the gates the site appears generally open, with limited delineation between different parts of the site.
5. While the appellant did not challenge the red line boundary of the enforcement notice, I have a duty to get the notice in order. An enforcement notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead v MHLG* [1963] 2 WLR 225. Following my site visit, I raised with the parties whether or not the appeal site comprises part of a mixed use.
6. Whilst it is not necessary for an enforcement notice to set out what the planning unit is, where a material change of use has occurred, it is necessary to ascertain the correct planning unit. In *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit 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
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
7. I note the appellant submitted a planning application to the Council for part retrospective change of use from a former coal yard to a waste transfer station and recycling facility which proposed a layout plan with a boundary which is similar to the enforcement notice plan. However, this is not determinative that the appeal site comprises a separate planning unit to the rest of the former

coal yard site. In deciding whether there is one planning unit in mixed use or several planning units, relevant factors may include¹:

- The form of tenancy and the legal relationship between the landlord and tenants, including the degree of control exercised by the owner;
 - The ease with which tenants may switch sites or expand or contract their areas of occupation;
 - The extent to which individual sites are physically defined or have changing boundaries;
 - The proportion of the site given to communal areas such as access, parking, landscaping etc, and the rights of use by the occupiers over them.
8. The former coal yard is owned by Manor Mix Concrete Limited, who lease the site out to the appellant, Cool Trailers, N.Johnson Motor Company and H&S Sheds and Fencing and is used for the storage of aggregate, trailers, cars, sheds and skip hire. The owner, Manor Mix Concrete Limited, uses various parts of the site.
 9. The appellant's business is concerned with the management of waste. Waste is brought to the site and managed within an area with a sealed drainage system. The appellant has secured a Standard Rules Permit, dated 4 November 2021, for a household, commercial and industrial waste transfer station with treatment.
 10. The permitted area is roughly square shaped and is located in the western part of the former coal yard, but excludes the access road, the weighbridge and area leading up to where the waste is managed. The permitted area also includes an area which, at the time of my visit, was used by Manor Mix Concrete Limited for the storage of aggregate, though this is outside the red line boundary of the enforcement plan.
 11. During my visit, I saw that the appellant utilises a building which is outside the red line boundary of the enforcement notice. The appellant's use of this building commenced after the issue of the enforcement notice.
 12. Other users of the former coal yard are unlikely to utilise the part of the site used for the deposition and sorting of wastes due to the requirements of the permit. Nevertheless, while the permit limits where certain waste activities can take place, the appellant explained that there are activities which they undertake, such as the storage of skips, storage of AdBlue, parking and washing of vehicles and the storage of certain wastes (e.g. uPVC windows), which do not need to take place inside the permitted area.
 13. Indeed, during my visit, I saw that uPVC windows were stored outside the permitted area. The weighbridge and associated weighbridge office are also located outside of the permitted area. During the hearing, a letter was submitted by the occupant of a nearby property, Document 1. Appended to the letter are a number of photographs, including photographs of skips stored adjacent to the boundary of their garden, dated 23 January 2023 and 10 March 2024. This location is outside the red line boundary of the enforcement plan.

¹ Consistent with the approach taken in Appeal APP/P1805/C/16/3163467

14. During the hearing the appellant provided an annotated plan, Document 7, setting out where its activities were carried out in the former coal yard, at the time the enforcement notice was served. Parking of cars, storage of skips, weighbridge and weighbridge office and wash bay are all located outside the western area.
15. The appellant uses the weighbridge to weigh vehicles coming into the site and carries out a visual assessment at the weighbridge before tipping. During the hearing, the appellant explained that other tenants also use the weighbridge, including Manor Mix and H & S Fencing. The appellant also advised that there is no allocated parking within the site and so vehicles can park across the site.
16. During my visit, I saw that other occupants of the former coal yard use land within the red line boundary, including storage (or siting) of a shipping container adjacent to the weighbridge cabin, storage of scrap metal. The shipping container is evident in a number of aerial photographs provided by the Council dating back to 2017 and so the site is likely to have been used in this way at the time the enforcement notice was issued. Although most likely outside the red line boundary of the enforcement notice, aggregate was also stored adjacent to the appeal site, with loading and unloading likely to take place within the red line boundary of the appeal site.
17. While different tenants appear to use different areas within the site, physical delineation is limited, with legato (or concrete) blocks used in some parts of the site, either stacked or placed individually on the ground, meaning that they can be easily moved. In a number of cases there is no physical marker on the ground to show the area of land within which an activity may take place. As a consequence, the precise area of land used by a particular tenant (or the owner) may change depending on their needs on a particular day.
18. Although I am concerned with what the planning unit was at the time the enforcement notice was issued rather than changes which may have occurred after its issue, photographs taken by the Council prior to the service of the enforcement notice also show the site as being relatively open, with limited delineation.
19. Indeed, the Environment Agency, during an inspection of the site on 3 March 2023, observed that 'the permitted area is not clearly demarcated. This has the potential to lead into [sic] your activities extending beyond the permitted area (photos CMOSK004, CMOSK005) showing the area outside of the permitted area for the waste activities to take place.'
20. Furthermore, the evidence points towards there being a significant degree of fluidity in terms of the way the former coal yard is used. Because there is a single owner, the appellant has been able to move into different parts of the site to suit its needs. For example, the appellant has used part of the site adjacent to the boundary with Rettford for the storage of skips and has, since the enforcement notice was issued, been able to move into a pre-existing building for the management of waste, with notice having been given to the occupier of the pre-existing building to vacate.
21. During the hearing, my attention was drawn to *Church Commissioners v SSE & Gateshead MBC* [1996] 71 P. & C.R., which concerned the Metro Centre shopping complex. In this case, it was found that there can be two units of occupation which are both relevant to the identification of the appropriate

- planning unit and where that is the case, it is a matter of fact and degree for the decision-maker to determine what is the appropriate planning unit. That point was also held in *Ralls v SSE and another* [1997] Lexis Citation 3720.
22. While the main focus of the appellant's waste management activities is within the western part of the site, the appellant uses other parts of the site for the carrying out of its skip hire business, including areas which are shared with the other users of the former coal yard. I note the parallels that Mr Byass sought to draw with the *Church Commissioners* case, that the Metro Centre has shared facilities, such as loading and parking.
23. However, in the *Church Commissioners* case, the retail unit in question was found to be a functionally and physically separate area of land whereas in the case of the former coal yard, there is limited physical delineation between the different activities within the site. While there are concrete panels located within the appeal site, for example, the appellant's activities extend well beyond this and so they do not create a physically separate area from the rest of the former coal yard.
24. The Council suggests that the areas which are in the appellant's exclusive occupation should be considered a separate planning unit. However, the use of the site for parking, storage of skips, washing of vehicles and storage of wastes not controlled by the Permit are all part and parcel of the appellant's activities. Indeed, the enforcement notice specifically references the parking of vehicles and storage of plant, machinery, containers, skips and vehicles associated with the unauthorised waste use.
25. While I recognise there has been substantial investment in the western part of the site due to the installation of a sealed drainage system, the permitted area could not be considered to be occupied for different and unrelated purposes to the land used by the appellant outside the permitted area, rather its activities all form part of the waste use.
26. The degree of control exercised by the owner over the former coal yard, the ease with which tenants may expand or contract their areas of occupation, the limited physical delineation between the different activities within the site, the sharing of the access, parking areas and the weighbridge all leads me to conclude, as a matter of fact and degree, that the former coal yard forms the appropriate planning unit, which is in a mixed use.
27. I have wide powers of correction, subject to the test of injustice under section 176 of the Act. The Council suggests correcting the plan to reduce the area of the red line boundary to exclude those areas which are shared by other users of the former coal yard. However, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities.
28. While it would be possible to correct the plan to reduce the area attacked by the enforcement notice, the allegation would still need to identify the different components of the mixed use. Were I to correct the allegation to refer to the other activities within the site, there may be implications for the appellant's case under grounds (a) and (f) as the planning merits for the mixed use may differ to the waste use. The appellant may also wish to put forward legal grounds of appeal. This would cause the appellant injustice. Furthermore, other occupants of the former coal yard may have wished to appeal.

29. There is limited information regarding the other activities taking place within the former coal yard or their lawfulness. Were I to include them in the allegation but not require their cessation, planning permission would be granted by virtue of section 173(11) of the Act, which could cause the Council injustice.
30. The Council points out that, even if I were to find the former coal yard is a single mixed use, the enforcement notice enforced against both a change of use and operational development consisting of the erection of a fixed canopy building covering the unauthorised waste sorting area, [and] the erection of a portakabin style office/facilities building. It is suggested that even if the appeal site is found to be in a mixed use, the enforcement notice could still require the removal of this operational development and the enforcement notice amended.
31. However, this, to my mind, would fundamentally change the nature of the enforcement notice. Although the notice refers to operational development, this is bound up with the alleged material change of use. The reasons for taking enforcement action refer to the breach of planning control having occurred within the last ten years, not four, which would have been the relevant time limit for operational development.
32. The reasons also refer to 'the change of use and associated operational development that constitutes the breach of planning control' and identify the harms and conflicts with policy against the matters that constitute the alleged breach of planning control, without differentiating between the material change of use and operational development. It is not clear what effect correcting the notice would have on the reasons for taking enforcement action and therefore what case the appellant would need to answer in terms of its appeal under ground (a).
33. While the appellant has now removed both buildings referred to and is not arguing that planning permission should be granted for either building, had the Council issued an enforcement notice in respect of the buildings only, the appellant may not have chosen to appeal, may have chosen to appeal on different grounds or may have chosen to withdraw their appeal prior to the hearing. Correcting the notice to refer to the operational development simply in an attempt to enable the Council to avoid an award of costs would prolong the hearing, which would cause both parties injustice.
34. The allegation and requirements are broadly stated and so, I do not consider the notice to be a nullity. However, the allegation does not identify that the appeal site 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 or Council and is therefore invalid beyond correction.

Conclusion

35. 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.

36. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Jackson	Counsel
Mr Medlock	Oaktree Environmental
Mr Chris Parry	Oaktree Environmental
Mr Graham Keevil	Keevil Heritage
Mr Mark Devenish	SCP Transport
Gemma Baker	Operations Director of Oxford Skip Hire Ltd

FOR THE LOCAL PLANNING AUTHORITY:

David Mytton	Solicitor
David Periaum	Planning Development Manager
Neil Richmond	Planning Enforcement Team Leader
Jonathan Durham	Enforcement Officer
Armid Akram	Senior Highways Officer
Ian Marshall	Transport and Development Lead for the County

INTERESTED PARTIES:

Andrew Byass	Counsel instructed by Taylor Wessing LLP for Wick Hall Estate.
Roger Thomas	Trustee of Radley Lakes Trust
Chris Henderson	Radley Parish Council
Suzanne Calvert Fisher	

DOCUMENTS SUBMITTED AT THE HEARING:

- Document 1: Letter dated 20 May 2024 from the resident of Rettford
- Document 2: Email dated 18 March 2024 from the Environment Agency
- Document 3: *Ralls v SSE & another* [1997] Lexis Citation 3720
- Document 4: Appeal Decision APP/P1805/C/16/3163467
- Document 5: *Church Commissioners for England v SSE & Gateshead MBC* [1996] 71 P. & C.R.
- Document 6: Amended enforcement plan proposed by the Council
- Document 7: Enforcement Plan annotated by the appellant