



Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th October 2024

Appeal Ref: APP/A2335/C/24/3346332

Land on the south west side of Moor Lane, Hornby, Lancaster, LA2 9LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Shaun Airey o/b Air Soft, Moor Lane against an enforcement notice issued by Lancaster City Council.
- The notice was issued on 21 May 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use from agricultural land to a mixed use comprising agricultural and recreational use, the erection of buildings and the storage of materials along the eastern boundary.
- The requirements of the notice are to:
 - (i) Cease the use of the Land for recreational purposes by way of removing all structures from the Land at all times outside of the temporary use of land period permitted by Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any amendments in relation to additional temporary use of land.
 - (ii) Permanently remove the erected buildings and all resultant materials/debris (shown for the purposes of identification only at Appendix C, labelled 1-5).
 - (iii) Permanently remove all materials stored along the eastern boundary (shown for the purposes of identification only at Appendix D).
- The period for compliance with the requirements is: four months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected by:

inserting the word 'material' before 'change of use...' and the word 'associated' before 'storage of materials ...' in paragraph 3.

Section 5 of the Notice is deleted and substituted with:

'(i) Cease the mixed use comprising agricultural and recreational use.

(ii) Remove the tree protectors, fences or other enclosures, shelters and structures that facilitate the unauthorised mixed use, (shown for identification purposes only at Appendix B), except for means of enclosure permitted by virtue of Article 3(1) and Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and remove all resultant materials or debris arising from such demolition.

(iii) Remove the buildings (shown for identification purposes only at Appendix C) and remove all resultant materials or debris arising from such demolition.'

- (iv) Remove all materials stored along the eastern boundary from the Land (shown for the purposes of identification only at Appendix D).’
2. Subject to the corrections and variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. The notice includes four appendices which are as follows:
- A: the plan showing ‘the appeal site’ edged in red.
- B: photographs of the alleged recreational use with associated structures or items on the land.
- C: photographs of the alleged buildings, which are numbered 1-5.
- D: photographs of the ‘sited’ materials, meaning those alleged to be stored.
4. The appeal was initially submitted only on ground (b) but the appellants representations extend into grounds (c) and (f). I explain and consider these grounds of appeal below. However, the appeal is not proceeding on ground (d) – although the appellant suggested two children’s play towers have been on site for some considerable time, those structures are not included in the development alleged by the notice.
5. Grounds (b) and (c) are ‘legal’ grounds where the onus is on the appellant to make their case on the balance of probabilities. His evidence does not need to be corroborated; it should be accepted so long as it is sufficiently precise and unambiguous, and his version of events is not contradicted or shown to be less than probable.
6. Since the appellant has not pleaded ground (a), I cannot decide whether or not to grant planning permission for the development described by the notice. The planning merits or any benefits of what is alleged are not relevant to this appeal and outside of my remit. Similarly, I have no scope to consider the appellant’s concerns about communication from the Council or an alleged trespass onto the site.

The Appeal on Ground (b)

7. Ground (b) is that the matters set out in the notice – the development alleged to be in breach of planning control – has not occurred. The appellant has pleaded ground (b) in relation to the alleged change of use. In order to succeed on ground (b), the appellant must demonstrate that the use of the land had not been changed, on the balance of probabilities, to include the recreational use alongside the lawful agricultural use.
8. At the hearing, however, the appellant confirmed that the site had been used for war games as well as agriculture. He also accepted that buildings 1-5 exist. In terms of storage, the parties agreed that this takes place as a use that is incidental to the mixed agricultural and recreational use. It follows that the development alleged by the notice has probably occurred as a matter of fact.
9. I shall exercise my powers under s176 of the Town and Country Planning Act 1990 (the Act) to correct the notice in order to make it clear that storage is ‘associated’ with the mixed use of the land. Making that correction will not

alter the notice in substance or cause any injustice to the appellant or the Council. Otherwise, however, the appeal on ground (b) must fail.

The Appeal on Ground (c)

10. An appeal on this ground is that the 'matters' do not constitute a breach of planning control. Ground (c) is pleaded where the appellant's case is that the development described by the notice does not require or already has planning permission. The appellant has pleaded ground (c) in relation to both the change of use and erection of buildings; I shall deal with the latter first.

Buildings 1-5

11. The appellant's position here is that the construction of buildings 1-5 did not constitute 'development' (as defined under s55 of the Act) which requires planning permission. It has been held in the Courts that what might constitute a 'building' would depend on its size, degree of attachment to the ground and degree of permanence as a matter of fact and degree¹. All of those factors must be considered, and none is necessarily decisive.
12. Buildings 1-5 are all sufficiently large to house agricultural vehicles and trailers; 'building 1' would be capable of accommodating a number of such items. I find that the buildings are all of such a size that they were probably constructed at least in part on site. The appellant has not shown that any of the buildings were brought to the land ready-made.
13. The buildings are all fixed to the ground via timber 'anchors', due to the exposed location of the site. The appellant explained at the hearing that the buildings could be quickly unbolted from their anchors and dragged by vehicles into different positions. However, the evidence suggests that the buildings were designed with few obvious features to facilitate relocation. They are fixed to the ground even if the fixings are detachable.
14. In terms of permanence, the appellant confirmed at the hearing that buildings 1-5 were all kept in the same place from when they were constructed, probably in late 2021, until the issue of the notice on 21 May 2024. The appellant has explained that he did not move the buildings before then because he was awaiting advice from the Council on how frequently they should be moved, and he was informed that disturbance of any structures which house bats could result in a breach of the *Wildlife Regulations*². However, that evidence does not tell me why the appellant would positively want to move the buildings.
15. The appellant has also not explained why he decided to move two of the buildings within the site following the issue of the notice. It is not clear whether – although there are bat boxes elsewhere on the site – bats actually roost in any of buildings 1-5. But even if the Wildlife Regulations were one good reason not to detach and drag the buildings around the site, the appellant has not shown why he would need or want to go to such efforts in order to use the buildings for storage as he does.

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 and *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2)* [2000] EWCA Civ 5569; [2000] JPL 1025

² The Conservation of Habitats and Species Regulations 2017

16. In the context of buildings, 'permanent' does not necessarily mean 'forever' or 'indefinitely'. The appellant has not demonstrated that buildings 1-5, including the two that were moved, have not caused some permanent change to the character of the land. Taking account also of their size and the timber anchors, on the balance of probabilities, I find that buildings 1-5 are 'buildings' and their construction represented 'development'.
17. The appellant has not shown that planning permission is granted for the construction of buildings 1-5 and so, in that regard, there has probably been a breach of planning control as alleged.

The Mixed Use and Incidental Storage

18. The appellant does not dispute that the recreational use is a distinct component of the mixed use, meaning it is not incidental or ancillary to the agricultural use also taking place on the land. Additionally, it is undisputed that the change of use to introduce recreation was a *material* change that requires planning permission and I can correct the notice to make that clear without causing any injustice.
19. However, the appellant argues that planning permission has been granted via Article 3(1) and Class B of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). It permits the temporary use of any land for any purpose for not more than 28 days in total in any calendar year, and the provision on the land of any moveable structure for the purposes of the permitted use.
20. The appellant states that the war games use takes place on only 10-14 days per year. The Council accepts that customers are on the land to engage in war games for less than 28 days per year, but they argue nonetheless that the use is not permitted by the GPDO partly because of buildings 1-5 and other structures which remain on the land.
21. The 'permitted development' right set out under Part 4, Class B is subject to the limitation B.1.(b) which is that temporary uses are not permitted if the land in question is a building or is within the curtilage of a building. Since buildings 1-5 were used to facilitate and store items associated with the mixed use, it seems probable that the war games use does not comply with limitation B.1(b) and is not permitted under Part 4, Class B of the GPDO.
22. Moreover, on the Council's estimation, there are some 70 additional structures on the land which include tree protectors, fences, enclosures, shelters, stores and the like. These structures are not mentioned in the allegation, but they are required by the notice to be removed, and the appellant confirmed that they facilitate the war games use. That latter point is clear from the sheer number of these structures, their dispersal across the majority of the site, their design with battlement features and shooting apertures, and their grouping into themed areas to enable player shelter and/or cover from opposing 'gunfire'³.
23. I heard the appellant's views that the other structures on the site are not 'development' such that they might not require planning permission. However, since those structures are not alleged in the notice, it is not appropriate to

³ By contrast to a previous paintballing use facilitated by inflatable obstacles and refuge points, which were deflated and removed from the site after each event.

consider whether or not they are in breach of planning control in their own right.

24. I acknowledge that the Court of Appeal judgement in *Ramsey*⁴ found that if the lawful use of the land can be reverted to (here agriculture) during times when the active recreational uses are not taking place, then only the temporary use is time limited by Class B. However, my finding that the recreational use included the use of buildings 1-5 without planning permission, is a clear distinction between that authority and the case before me.

Conclusion on ground (c)

25. On the evidence before me, I find that the alleged recreational use is probably not permitted by Article 3(1) and Part 4, Class B of Schedule 2 of the GPDO. It follows that planning permission is not granted for the alleged mixed use, including the incidental storage of a digger bucket, spare timber and sheeting materials, pipes, fencing, insulated cladding and netting similar to those used in the various structures that facilitate the war games activities.
26. I have found that the construction of buildings 1-5 probably requires but does not have planning permission. The same applies to the change of use described by the notice. It follows that, on the balance of probabilities, there has been a breach of planning control as alleged. The appeal fails on ground (c).

The Appeal on Ground (f)

27. This ground of appeal is that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
28. In this case, the notice alleges that there has been a change of use, and it requires the unauthorised use to cease. Additionally, the notice alleges the erection of buildings and requires that they are removed. The notice does not 'under-enforce' and the purpose of the notice must be to remedy the breach.
29. For that reason, and because the appellant has not appealed the notice on ground (a), so that I could consider planning merits, I have no scope to consider whether the requirements of the notice are excessive to remedy any injury to amenity. The only case the appellant can make for ground (f) is that lesser steps would suffice to remedy the breach.
30. The appellant advised at the hearing that he is willing to remove several structures such as a bridge, mock cannons, goat towers and redundant tree protection. Nonetheless, his case for ground (f) is that he be allowed to retain other protectors, fences, enclosures, shelters and features. It is well established that, in order to restore land to its condition before the breach of planning control took place, an enforcement notice can require the removal of structures that facilitate an unauthorised change of use, even if those structures do not represent 'development'⁵.
31. However, structures which enclose land and are no higher than 2m, are permitted under Article 3(1) and Schedule 2, Part 2, Class A of the GPDO. The

⁴ *Ramsey v SSETR & Suffolk Coastal DC* [2002] JPL 1123

⁵ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630

notice should be varied so that these items do not have to be removed. Otherwise, I find the requirements of the notice necessary and not excessive to remedy the breach.

32. That said, the wording of the requirements lacks precision and so the notice should be corrected or varied to ensure clarity. Step (i) requires the cessation of the recreational use 'by way of' the removal of the structures outside of the temporary period when the use would be permitted by the GPDO. I understand that wording was chosen because the notice cannot take away the appellant's permitted development or other lawful use rights. The problem, however, is that Step (i) is not square with the allegation.
33. Since the notice alleges that there has been a change of use to a mixed use, it should require that the mixed use is ceased – and there should be a full stop at that point, because removal of the structures alone might not suffice to make the war games component compliant with the GPDO. The notice should require the cessation of the mixed use, the removal of the structures which facilitate the use, and the removal of Buildings 1-5 as discrete activities.
34. I can correct the notice to that effect without causing any injustice because doing so will make the requirements clearer and, once they are complied with, the appellant will be able to exercise their rights under the GPDO. The appeal succeeds on ground (f) to the extent that the notice is corrected and varied.

Conclusion

35. For the reasons given above, I shall uphold the notice with corrections and variation, but I conclude that otherwise the appeal should not succeed.

R. Hitchcock

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Shaun Airey

Air Soft, Moor Lane

FOR THE COUNCIL:

Kim Ireland

Planning Enforcement Officer

Debbie Threlfall

Senior Planning Enforcement Officer.