



Appeal Decision

Site visit made on 29 October 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date 21 November 2024

Appeal Ref: APP/V3120/C/24/3347895

Land North West of car park of the Red Lion Public House, Chapel Lane, Blewbury, Oxfordshire OX11 9PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Annabel Cochrane against an enforcement notice issued by Vale of White Horse District Council.
 - The notice was issued on 30 May 2024.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the material change of use of the Land from woodland copse in connection with Hall Barn to a mixed use comprising a woodland copse in connection with Hall Barn, ancillary residential use connected with the adjoining Public House, and commercial storage for the adjoining Public House.*
 - The requirements of the notice are to:
 - (i) Cease the use of the Land edged red for residential purposes connected with the adjoining Red Lion Public House.
 - (ii) Cease the use of the Land for commercial storage purposes in connection with the adjoining Red Lion Public House.
 - (iii) Remove from the Land the OOD House, (the OOD House is sited in the approximate location shown edged blue on the Plan); and any associated domestic paraphernalia and reinstate the Land to its former condition prior to the breach of planning control occurring.
 - (iv) Remove from the Land any commercial storage items including but not limited to a) Recycling and waste bins b) wooden pallets c) plastic bottles d) tarpaulin e) cardboard f) wooden and plastic chairs g) wheelbarrow h) bricks i) metal and plastic plant pots j) plastic crate k) BBQ.
 - (v) Remove from the Land any and all waste and materials resulting from compliance with steps (i) to (iv) above.
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f) of the Town and Country Planning Act 1990 (as amended) (the Act). 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.
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Decision

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

The deletion of all of the text in section 3, the breach of planning control alleged, and the substitution therefore of the following text:

Without planning permission, the material change of use of the land to a mixed use for the siting of an OOD house for the purposes of human habitation, and for commercial storage.

And

The deletion of all of the text in section 5: what you are required to do, and substitution therefore by the following text:

- i. Cease the use of the OOD house for human habitation and permanently remove it from the land.
 - ii. Remove from the land any domestic paraphernalia, debris or materials arising from compliance with the above requirement.
2. Subject to the above corrections, the appeal is allowed and the enforcement notice is quashed.

Matters concerning the notice

3. The notice alleges a material change of use of the land to a mixed use comprising the woodland copse (which is not a 'use' of land) in connection with Hall Barn and an ancillary residential use in connection with The Red Lion public house and commercial storage. For the OOD house (the structure) to be used in an ancillary manner to the pub, as alleged, both would need to be in the same planning unit - an ancillary use cannot fall outside the planning unit but must be carried on in the same planning unit as the primary use.
4. The Title Deed plans for The Red Lion and Hall Barn show separate parcels of land within the ownership of each property. The enforcement notice plan identifies the land as being part of the land within the ownership of Hall Barn¹. Both are within the ownership of the appellant.
5. The Courts have established that in order to determine whether there has been a material change of use of the land, it is important to have regard to the concept of the planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. Whether or not the siting of the structure falls outside that which could be considered the residential 'curtilage' is of no consequence. 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/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.
6. Hall Barn is a substantial detached property within large grounds, centrally located in the village. The house faces Westbrook Street and its land stretches southwards to form a boundary with The Red Lion on Chapel Lane. It is surrounded by residential properties except for an area of public open space to its northern boundary. The property has several outbuildings situated within proximity of the house and formal gardens, a swimming pool and croquet lawn. Watery Lane, a public pathway borders Hall Barn on its southwestern side. Chalk streams run through the land as they do through many other residential properties in the village.
7. Beyond the more formal layout of the land surrounding the house, the open grassed area extends southwards. Post and rail fences bound the site with its neighbours and there are also post and rail fences within the grounds. The appellant and her parents describe the use of the land over the past 45 years

¹ There is no legal obligation for the requirements of the notice to cover the entirety of the relevant planning unit. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 simply requires that the notice specify the precise boundaries of the land to which it relates.

during which they have resided at Hall Barn, to be residential garden with a time between 1976 and 1991 when ponies were also kept on the land. Prior to their purchase of Hall Barn, some of the land was said to have been an orchard and this is as indicated on copies of old OS maps.

8. The structure sits in the southeast corner of the land within a small number of trees which were planted by the appellant's family as boundary screening. There is a post and rail fence with two gates to the north and a brick wall which separates it from the pub car park to the south. The fence looks to have been in place for some time. A pair of gates recently installed in the brick wall provides access to the Red Lion car park.
9. At my visit I observed that the grounds of Hall Barn are maintained, and the grass was cut. Ornate pedestrian bridges cross the streams providing walkways around the land, and there was an area for composting and for storing logs. Although more formally maintained closer to the house, there is little that would differentiate the grounds in terms of appearance and function. Aerial images which are dated 2005, 2009, 2016, 2019 and 2022 support my contention that there is nothing to suggest a use other than as land closely associated with the residential use of the dwelling.
10. While there is physical separation of areas with some post and rail fencing, both a functional and physical separation are required before a smaller unit can be identified. Without functional separation the ancillary link remains and without physical separation there is no smaller physical area which can be identified as a separate unit. The extended grounds of the house are clearly part of the residential planning unit. To argue otherwise would be to suggest that the land on which the structure had been sited had a different use and that there were two or more uses being undertaken at Hall Barn. This is clearly not the case.
11. To support my view, I note the Conservation Officer comments refer to the structure being on land historically associated with the grade II listed Hall Barn, not in an area that was designed to be ancillary to the pub, and that the land clearly relates more to the pasture and open space associated with Hall Barn. Furthermore, the Conservation Appraisal notes that the open land within the conservation area is primarily within residential curtilages in domestic use, some of which in Westbrook Street are quite extensive. It observes that much of the open space is in attractive garden use or grassed areas, and many gardens have mature trees along boundaries, and some retain remnants of ancient orchards. It is also noted that the Council's report entitled 'Authorisation for enforcement action' states "the OOD House is situated on land belonging to 'Hall Barn', located to the northwest of the carpark of The Red Lion pub".
12. Although the two properties are within the same ownership, there is a clear degree of physical and functional separation between the commercial and residential uses. While some commercial items relating the pub are stored on the land, this is not enough to indicate that the land and the pub could be considered to be a single planning unit. Overall, I find that there is nothing to persuade me that the structure is sited on anything other than land belonging to Hall Barn and that the land within the ownership of Hall Barn forms a single planning unit of occupation which has one primary use, residential. In these

circumstances, there is an error with the notice and the notice should be corrected to ensure it is directed to the correct planning unit.

13. There are wide-ranging powers to correct or vary the notice subject to the essential test of injustice to either party. The way in which the appeal parties have addressed and presented their respective cases clearly indicates to me that the alleged breach of planning control has caused no confusion. It is apparent to me that the recipient was clearly aware of its intent and purpose. I do not consider that the envisaged corrections expand its scope. I am satisfied no injustice is caused by these intended corrections and they do not make the notice any more onerous than first issued².

The appeal on ground (e)

14. This ground of appeal is that copies of the notice were not served as required by section 172 of the Act. Section 172(2) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected.
15. The appellant's claim is that The Red Lion is not in their ownership, nor is it their place of residence. The enforcement notice has therefore been incorrectly served and is not in accordance with part 6 of section 172 of the Act given that it was served on a number of people, with incorrect ownership details and the notice was not clear about which party the notice was being served on.
16. The notice was served on Ms Cochrane at Hall Barn and The Red Lion, the 'owner' and the 'occupier' of both Hall Barn and The Red Lion, and Santander UK PLC. The Council's Land Registry search identified Tengate Limited as the freehold owner of The Red Lion whom Ms Cochrane is the sole director, with the registered office at Hall Barn. The witness statement prepared by Council officers confirms that Ms Cochrane accepted service on behalf of all parties, including the 'owner' of The Red Lion.
17. Section 329 of the Act sets out the legal framework for the service of a notice. Section 329(2) states that where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if— (a) it is addressed to him either by name or by the description of "the owner" or, as the case may be, "the occupier" of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or (b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and— (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.
18. I am satisfied that the council served the notice correctly and the appellant has submitted their appeal against the notice within the timeframe and has

² Section 176(1) of the Act

had an opportunity to argue their case fully during the appeal proceedings. It cannot, therefore, be said that the appellant has suffered any substantial prejudice.

19. For the reasons given above, I conclude that the appeal on ground (e) fails.

The appeal on ground (c)

20. In an appeal on this ground the appellant must demonstrate that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probabilities.

Background

21. The structure is a prefabricated flat-roof cabin with mirror glass on three sides and is clad with horizontal timber boarding on the remaining side which faces the pub car park. It measures 6.3m by 3.3m and is 3.1m in height. With a footprint of 21 sqm, it provides modest space for a double bed, a small table with two chairs and a stool, a basic kitchenette (sink, fridge, worktop) and a shower room which contains a toilet. Drainage and electricity are supplied by the Red Lion. It rests on six screw piles and is not fixed or otherwise attached to the ground. There is no disagreement between the parties that the structure is not a building but does fall within the definition of a caravan as defined by Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968 (the 1968 Act).

Has a material change of use occurred?

22. While the meaning of 'use' is provided in s336(1) of the Act, the concept of a material change of use is not defined in statute or any statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree. Thus, whether there has been any material change in the use of the land is dependent on the purpose to which the structure is put, examined against the existing use of the land. The mere siting of the structure does not in itself amount to the making of a material change in use of the land. It is necessary to consider whether there has been a change in the definable character of the use of the land in relation to the whole planning unit.

23. The structure is said to be used principally between the hours of midnight and 9am when the appellant is not running the pub. It is a private space used by the appellant and her partner. Hall Barn is the principal residence of the appellant who has owned the property since August 2021³ having bought it from her elderly parents who still reside in the house and to whom she often provides assistance. I acknowledge that during the Council's initial investigations the appellant described her use of the structure as office/accommodation during refurbishment works to the pub. Nevertheless, Hall Barn is where the appellant is registered to vote and where she receives her post. It is also where she keeps her personal belongings, eats meals, bathes, keeps bikes and cars, swims, plays short tennis and croquet, hosts parties and watches TV. At my visit, I noted that there is little room for

³ Title deeds provided by LPA Statement Appendix 7

storage of personal possessions and no indication otherwise that the space is used in a manner more akin to 'camping out'.

24. From the presented evidence and from what I observed, there is a familial and interdependent relationship between the structure and Hall Barn and its use is part and parcel of the primary residential use of the land. A separate unit of accommodation has not been created and the use does not therefore amount to development as defined in s55(1) of the Act for which planning permission is required.

Commercial storage

25. While it is apparent that at the time of my site visit the amount of storage had been reduced, it seems to me that this alleged use of the land is de minimis to the extent that there is not a definable change to the character of the use of the land. There were clearly items being stored that had a commercial purpose, but also items of a domestic nature. Accordingly, I consider that the storage of the items as alleged in the notice does not involve development. Therefore, I shall delete the requirement to remove from the land any commercial storage items under section 5 of the notice.

Conclusion on ground (c)

26. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be corrected and quashed. Consequently, the appeal on ground (a) and the deemed planning application, and ground (f) do not fall to be considered.

S A Hanson

INSPECTOR