



Appeal Decision

Hearing Held on 5 November 2024

Site visit made on 5 November 2024

by R J Perrins MA

An Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/W3520/C/23/3327399

The Road Haulage Depot, The Old Airfield, Town Lane, Wetheringsett-cum-Brockford IP14 5NF.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Gary Banham against an enforcement notice issued by Mid Suffolk District Council.
 - The enforcement notice was issued on 10 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the change of the use of the land for the purposes of the stationing of shipping containers.
 - The requirements of the notice are to remove all shipping containers currently on the site and cease the use of the land for the storage of shipping containers.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Preliminary matter

2. Since the appeal the Council formally adopted the Babergh and Mid Suffolk Joint Local Plan. The policies therein supersede the policies of the Mid Suffolk Local Plan cited in section 3 of the enforcement notice.

Background

3. The site, part of a what was an airfield, is surrounded predominantly by agricultural land and is found to the south of Town Lane and east of the main Norwich Road, south of Wetheringsett-cum-Brockford. The Grade II listed Moat Farm can be found to the southwest of the site and the listed curtilage of Moat Farm Barn is just beyond the site's western boundary.
4. In 1992 planning permission (ref:1056/92) was given for use of the site as a *haulage depot with ancillary use of warehouse and workshop uses*. During my site visit I was able to see a warehouse, workshop building and hardstanding being used for the storage of shipping containers. Although the workshop building, and warehouse were inaccessible at the time and I was unable to determine if they were in use.

5. A signed Statement of Common Ground was submitted on the day prior to the Hearing.

The appeal on ground (c)

6. An appeal on ground (c) is that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof falls upon the appellant.
7. The concept of a material change of use is not defined in any statute or statutory instrument. It is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
8. There is a planning history on the site which includes planning permission for use as a haulage depot with ancillary uses. There is no dispute that the permission, given the haulage use, could include the storage of containers as ancillary to the haulage depot. In turn, it is accepted that containers have been stored on the site to a varying degree for many years.
9. However, for the argument to hold any weight, the incidental use (storage of containers) must be functionally related to the primary use. By definition, such a use cannot be one that is integral to or part and parcel of the primary use. Although I recognise, incidental uses may be changed, expanded or decreased without giving rise to a material change in use, so long as they remain subsidiary to the primary use of the planning unit as a whole.
10. In that light, and from all that I have seen and heard, and accepting at times there were large numbers of containers stored on site over a number of years, it is apparent that in 2020 the storage of containers increased immeasurably. As I heard, that was due to the storage of PPE equipment. It seems to me the Council were correct to take action at that time. There was a significant difference in the character of activities (to that permitted) through the storage of containers across the majority of the site. The storage of containers had at that point, if not before, and as a matter of fact and degree, expanded such that it had ceased to be functionally related and incidental to the extant primary use, it had become a primary use on its own.
11. To that end, and whilst only a snapshot in time, the fact that on my site visit, neither the workshop or storage building were accessible, supports the finding that the storage of containers had become a use in its own right. I say that given the appellant has not pointed to any significant difference in the use over recent years and the fact that access to the buildings was completely closed off.
12. Since no planning permission has been granted for the use, it constitutes a breach of planning control. Hence, the appeal on ground (c) fails.

The appeal on ground (d)

13. The Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is also the equivalent of ground (d) in an enforcement appeal. The Guidance says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less

than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability".

14. Those sentiments apply equally to an Inspector at appeal stage and the tests relate in substance to the use at issue in this appeal. Therefore, in this case the onus is upon the appellant to demonstrate, that the breach of planning control was immune from enforcement action due to the passage of time, in this case being a continuous period of 10 years prior to the date on which the enforcement notice was issued; since 10 July 2013 or earlier.
15. To that end the appellant has submitted 17 sworn witness statements which all point to the storage of shipping containers on the land. Those statements, amongst other things, set out the following:
 - The storage of containers for various periods for a number of companies including 'Toys-R-Us' and Noraisi Shipping Lines.
 - 400 refrigerated containers being stored between 2002 and 2008, four to five high.
 - Aerial photographs from 1997 through to 2022 showing the storage of containers with some clearly showing containers stacked on top of one another.
 - A statement from an employee who has worked on the site for 19 years and operated a forklift to stack containers.
 - On many occasions containers being stacked 4/5 high.
 - Various statements from local people, and those who have known the site in a professional capacity, who attest to the site being used for the storage of containers for many years and more than 10.
16. In addition, records from Parish Council meetings show that between 2004 and 2008 there were concerns about the site which included reference to containers being stacked 4 and 5 high.
17. Against that, the Council point to their own evidence which consists of a number of Google Earth and Street view images showing the site with no containers or a reduced number to what was seen from 2020 onwards. Therefore, the use of the land was not persistent.
18. However, all of the sworn statements have gone unchallenged by the Council and whilst they have not been cross-examined there is nothing before me to suggest that they are not robust and truthful. Furthermore, I heard from two of the witnesses directly at the Hearing who confirmed what they had said in their statements. In addition, their recollections that containers have been stored and stacked for many years. Again, I have no reason to doubt their oral evidence which went unchallenged.
19. Therefore, it seems to me that the evidence points to the site having been used for the storage of containers for many years. Photographs and written submissions demonstrate that over time those containers would have been stacked upon one another. Whilst the Council's evidence does indicate periods when containers were not stacked on the site, there's nothing before me to say they are anything but snapshots in time. The same could be said for the appellant's photographs.

20. Nevertheless, it seems to me the argument that one or two days later, the site could then have been replenished with containers is not without merit. Furthermore, there's nothing before me to suggest that the times when containers were not stacked in such numbers were times when there was a break in the use. There is nothing before me to suggest that it is not reasonable to conclude the very nature of container storage is one where numbers will fluctuate for various reasons.
21. The Council also accepted that the matter was raised on a number of occasions by the Parish Council and suggested that action may have been taken and the stacks of portacabins reduced. However, they are unable to point to any evidence in that regard and the suggestion inevitably carries no weight. Indeed, the only inconsistency the Council can point to is the photographic evidence which I have explained above.
22. Considering all these matters together it seems to me that the weight of evidence falls in favour of the appellant and the appeal on ground (d) will succeed. That is to say, on the balance of probability, the appellant's evidence supports the case that the use of the site for the storage of shipping containers has subsisted for a period of ten years or more, prior to the serving of the enforcement notice.

Conclusion

23. For these reasons, and having considered all matters raised, the appeal succeeds on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Gary Banham	Appellant
Philip Cobbold	Planning agent
Ross Burrows	Counsel

FOR THE LOCAL PLANNING AUTHORITY:

Simon Bailey	Planning Manager Monitoring Compliance and Enforcement
Chloe Anderson	Senior Planning Enforcement Officer

INTERESTED PERSONS:

Kim Forster	Local Resident
Tony Alston	Local Resident and Parish Councillor

DOCUMENTS

- 1 Statement of Common Ground
- 2 Relevant new planning policies and schedule.