



Appeal Decisions

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal A Ref: APP/N0410/C/22/3297957

Appeal B Ref: APP/N0410/C/22/3297958

Appeal C Ref: APP/N0410/C/22/3297959

Appeal D Ref: APP/N0410/C/22/3297960

Willowbank Nurseries, Oxford Road, Denham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeal is made by Mr Alec Lea (Appeal A), Mr Kevin Lea (Appeal B), Mr Thomas Lea (Appeal C) and Mrs Margaret Bates (Appeal D) against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 24 March 2022.
- The breach of planning control as alleged in the notice is 'without planning permission, a material change of use of the land and buildings to a mixed use (Sui Generis) (the "unauthorised mixed use") comprising:
 - the importation, deposit, processing and transfer of waste materials;
 - storage and distribution of skips, scaffolding materials, tyres and construction materials;
 - storage of containers, skip vehicles and other commercial vehicles;
 - parking of skips vehicles and other commercial vehicles.along with the siting of associated paraphernalia, items, equipment and vehicles and the carrying out of operational development to facilitate this unauthorised material change of use, namely
- (1) the siting of containers used in connection with the authorised use; and
- (2) the erection of buildings used in connection with the unauthorised use
- (3) the laying of hardstanding
- (4) the erection of lighting; and
- (5) the erection of fencing.
- The requirements of the notice are to:
 - 5.1 Cease the use of the Land, (Outlined by a thick black line on the attached Plan) for the following uses;
 - A) the importation, deposit, processing and transfer of waste materials
 - B) storage and distribution of skips, scaffolding materials, tyres and construction materials
 - C) storage of containers, plant and machinery, skip vehicles and other commercial vehicles
 - D) parking of skips vehicles and other Commercial Vehicles
 - 5.2 AND, remove from the Land (outlined by a thick black line on the attached Plan):
 - A) All imported waste material;
 - B) All skips, stored, distributed and used in association with the unauthorised use/s;
 - C) All scaffolding materials, stored, distributed and used in association with the unauthorised use/s;
 - D) all tyres stored, distributed and used in association with the unauthorised use/s;
 - E) all construction materials stored, distributed and used in association with the unauthorised use/s;
 - F) all containers and buildings, used in association with the unauthorised use/s;
 - G) all plant and machinery stored and used in association with the unauthorised uses;
 - H) all vehicles stored and parked in association with the unauthorised use/s;
 - I) all paraphernalia, items and equipment associated with the unauthorised use/s;

- J) all lighting used in association with the unauthorised use/s;
 - K) all fencing erected in association with the unauthorised use/s
 - 5.3 AND, remove from the Land, (Outlined by a thick black line on the attached Plan):
 - A) All hard standing associated with the unauthorised use/s, denoted in the area hatched black on the attached Plan.
 - The periods for compliance with the requirements are:
In relation to the requirements at 5.1 (A-D) of this Notice, these uses should cease within three months of the date the notice takes effect;
In relation to the requirements at 5.2(A-K) and 5.3(A) of this notice, the removal of all items should be carried out within nine months of the date of the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Act.
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Decisions

1. The appeals are allowed on ground (g) and it is directed that the enforcement notice is varied by the deletion of the words "three months" and "nine months" in relation to the time periods for compliance at Schedule 5 and their substitution with the words "twelve months" as the periods for compliance.
2. Subject to the variations, the enforcement notice is upheld.

Preliminary Matters

3. The appeals were initially brought on the basis of grounds (b), (c), (d), (f) and (g) of section 174(2) of the Act and the appeal was proceeding as an inquiry. During the course of the appeal the appellants confirmed their intention to withdraw their appeals on grounds (b), (c), (d) and (f). A Statement of Common Ground (SOCG) signed on behalf of the appellants and the Council and dated 12 April 2024 was submitted to explain the position and to set out the parties' views on a change of procedure.
4. Consequently, the appeals proceed solely in relation to ground (g). Given that the appeals under ground (g) can be clearly understood from the appeal documents, the evidence can be properly understood from the written evidence and it does not require testing under oath, the appeal procedure was varied to written representations.
5. The SOCG included additional evidence in support of the appellants' appeals under ground (g) given the passage of time since the appeals were made and a change in personal circumstances. Therefore, the Council and interested parties were given the opportunity to provide their comments on this matter.
6. With the agreement of the main parties, a site visit was deemed to be unnecessary. No site visit was undertaken. I am satisfied that the appeals can be determined on the written evidence before me.
7. An email from the appellant dated 20 March 2024 suggests that the requirement to remove from the Land all fencing erected in association with the unauthorised use concerns only the internal fences and not external boundary fencing, this matter was not addressed within the SOCG. The appellants were asked for their comments on this matter and whether this should be dealt with as a hidden ground of appeal under ground (f), in that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objection. The appellants failed to respond, and no evidence has been provided in respect of this matter. In any event, even if I were to consider this matter as a hidden ground of appeal, since the

enforcement notice requires fencing to be removed and the appellants have not disputed the unauthorised use has occurred, the notice can require removal of works that have facilitated an unauthorised change of use, and the argument would not have succeeded in any event.

Ground (g)

8. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. An appeal under this ground is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps of the notice.
9. The appellants submit that the periods of three and nine months, respectively, are not reasonable periods in which to comply with the requirements of the notice and that the periods for compliance should be increased.
10. The SOCG sets out that the appellants are mainly responsible for the site and have provided detail about their current personal and health circumstances. The Council accepts that it has no evidence of their own to rebut the position put forward by the appellants and in the circumstances the Council confirms it has no objection to an extension of time to twelve months for all steps stated within the notice. I see no reason to take a different view and I consider a more reasonable compliance period to be that of 12 months.
11. However, as the appellants' originally submitted evidence sought an extension to the period of compliance to '*not less than two years*' and the appellants proceed with their appeals under ground (g), I shall therefore give consideration to the originally stated longer period of time.
12. The appellants advise that the appeal site is occupied by tenants and that whilst a number of those businesses are long established, some are 'low level and marginally viable'. Suitable alternative sites within the area are anticipated to be difficult to find and/or not at an affordable level of rent. Issues about obtaining vacant possession of the site from other business operators have also been cited. I accept that the requirement to relocate businesses will cause financial hardship for the appellants, other business owners, their employees and their families. However, I also note that the SOCG confirms that a number of businesses have already vacated the site.
13. There is little information regarding the terms of occupation of the land of any remaining business operator and what length of notice is required to be given under the terms of any tenancy agreement to achieve vacant possession of those parts of the site. No detailed information has been presented to indicate that it would not be practically possible for the uses to be ceased and the works required to carry out the steps within 12 months.
14. There are legal procedures for eviction which the appellants could follow in the event a tenant resists vacating the site. Although occupancy by a tenant may limit the appellants' ability to access and carry out some or all of the works required by the notice, I consider 12 months is likely to be sufficient to gain access to the site and carry out the works required by the notice.

15. Whilst I acknowledge the difficulties and financial hardship that are likely to be experienced, I am required to balance the circumstances of the appellants and the businesses using the appeal site against the harm caused by the development. I consider, in this case, 12 months is reasonable and proportionate and shall vary the terms of the enforcement notice accordingly.

Conclusion

16. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall therefore vary the enforcement notice prior to upholding it. The appeals on ground(g) succeed to that extent.

E Brownless

INSPECTOR