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# Appeal Decision

Site visit made on 29 October 2024

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 December 2024**

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**Appeal Ref: APP/D1265/C/23/3327657**

**Land at The Poplars, Three Gates, Leigh, Sherbourne DT9 6JQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Robin Howard against an enforcement notice issued by Dorset Council.
- The notice was issued on 11 July 2023.
- The breach of planning control as alleged in the notice is: The material change of the use of the Land and buildings thereon from a mixed agricultural use and use as a tree surgeon's service yard to use for the repair and maintenance of domestic and commercial motor vehicles, storage of domestic and commercial motor vehicles and storage of other vehicles and items not used for agriculture and/or tree surgery. Operational development integral to the above change of use consisting of the erection of buildings and structures as shown on the Aerial Photograph attached hereto<sup>1</sup> as follows:
  - I. an extension to an existing building marked "Building 1" on the Aerial Photograph
  - II. a corrugated shed marked "Building 2" on the Aerial Photograph
  - III. a pole barn marked "Building 3" on the Aerial Photograph
  - IV. a static mobile home marked "Building 4" on the Aerial Photographand in addition, construction of a driveway and hardstanding as shown on the Aerial Photograph.
- The requirements of the notice are to:
  - a) Cease use of the Land including all buildings and structures thereon for storage, maintenance, and repair of vehicles, including associated plant, equipment and machinery; and cease uses ancillary thereto.
  - b) Remove all vehicles and other items stored on Land or buildings thereon in connection with the use described in a) above.
  - c) Demolish and remove Buildings 1, 2 3, and 4 as indicated on the Aerial Photograph and their attached services and equipment.
  - d) Remove all debris and materials resulting from c) above from the Land.
  - e) Excavate the driveway and hardstanding as indicated on the Aerial Photograph and remove all resulting debris and materials from the Land.
- The period for compliance with the requirements is: Within 3 months from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) 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.

**Summary Decision: The appeal is allowed and the enforcement notice is quashed.**

## Preliminary matters

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the

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<sup>1</sup> Reference to the Aerial Photograph is a reference to an aerial photograph attached to the Enforcement Notice.

enforcement notice ("the Notice") in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.

2. Requirement a) of the Notice includes the cessation of repair of vehicles. However, the alleged breach of planning control refers to domestic and commercial motor vehicles and other vehicles not associated with agriculture and/or tree surgery. It is possible that some storage and maintenance of vehicles associated with a lawful use of land could take place and so the requirements, in specifying 'vehicles' generally, may go beyond remedying the alleged breach of planning control. This is carried forward to requirement b), which refers back to the uses in requirement a), rather than the alleged breach of planning control. Therefore, the Notice should be corrected so that the first requirement refers to the storage, maintenance, and repair of domestic and commercial vehicles not associated with agriculture or tree surgery.
3. Requirement a) also includes the cessation of 'uses ancillary thereto'. It is not clear what other activities the Council thinks may be ongoing on the Land and no such uses are detailed on the Notice. Therefore, this requirement is ambiguous. It is also unnecessary because, if such uses exist and are ancillary, they would stop with the cessation of the primary use alleged. If they did not stop, and resulted in a new, separate breach of planning control, then the Council could consider serving another enforcement notice.
4. Requirement e) is to excavate the driveway and hardstanding. The word 'excavate' is somewhat vague, and it is not clear whether it would require the digging up of the entire driveway and hardstanding. However, as both main parties appear to understand this to be the meaning, the wording can be corrected to require the removal of the driveway and hardstanding in their entirety.
5. The above corrections, along with a required comma after the number "2" in requirement c) would remove internal inconsistencies within the Notice, would add clarity, and ensure that the Notice did not go beyond remedying the breach of planning control. They would not change the purpose, operation, or interpretation of the Notice as a whole and, therefore, no injustice would arise from such corrections.

### **Ground (b)**

6. Ground (b) is that the matters alleged have not occurred. Even though it is the Council that has alleged that development has occurred, on this ground, the onus is on the appellant to prove their case to the standard of the balance of probabilities.
7. Before serving the Notice, the Council officers' site visits identified a large amount of objects stored on land towards the rear of the site. They also noted a lack of livestock on the land. The appellant has said that he rents additional land nearby, periodically moves his livestock around, and allowed grazing amongst the various objects. There is no particular evidence to make this statement unlikely.

8. Indeed, at the time of my visit, there was livestock on the site. There was hay stored in Building 3 and it appeared that some had been laid out as a bedding area. While all visits can only provide a snapshot in time, I note that the Council's appeal statement indicates that the site is not 'solely' being used for agriculture, implying the presence of some agricultural activity. The Council's appeal statement and officer report also provide no clear indication of the use of building 3, merely commenting that it does not have planning permission. These things combine to make the appellant's position that agriculture is still ongoing on the land more likely than not.
9. At my site visit, I saw that there remains a significant number of vehicles and machinery, both externally and within buildings, of a type likely to be connected with tree surgery. Some of the vehicles are shown in the Council's photographs that pre-date the Notice. There was also tree-surgery equipment in a range of buildings on the right hand side of the access, including where the Council previously saw a vehicle 'spray bay', and some unspecified machinery in Building 2. While the appellant may have advised Council officers that he was reducing his tree surgery business, my observations appear to indicate that the tree surgeon's service yard component of the previous use stated on the Notice remains ongoing.
10. That is not to say that some new uses have not been introduced onto the site. The appellant claims that all vehicles stored and/or maintained on the land are connected with agriculture or tree surgery. However, within the various buildings, I saw a wide range of vehicles of various ages. A number of these appear to be historic or vintage models that have been either restored or kept in a prime condition as may befit exhibition rather than work. There is also associated historic memorabilia. It may well be that these are agricultural vehicles and objects, but given the way they are laid out and their condition, I find that they are probably not stored on the site in connection with an agricultural use of the land. Rather, it is likely to be a separate storage use.
11. The appellant seems to have interpreted the Notice as alleging that commercial vehicle repairs are taking place on the Land. However, it actually alleges the repair of domestic and commercial vehicles. There are facilities for vehicle repair within Building 1 and it seems likely that most of these are associated with the repair and maintenance of the historic farm machinery. They could also be associated with the maintenance of any active working agricultural vehicles and equipment. Either way, they do not appear to be domestic or commercial vehicles.
12. It may be reasonable to classify the tree-surgery related vehicles as commercial. However, it is somewhat unclear whether the Council views these as separate to other commercial vehicles because the allegation seems to target storage of commercial vehicles and storage of other vehicles not used for agriculture and/or tree surgery separately.
13. However, while some light maintenance of one of the tree surgery vehicles may have been observed by the Council's officers, it is unclear why this would not fall within the stated pre-existing use cited by the Council on the Notice that included a tree surgeon's service yard. No party has produced any clear evidence of other commercial vehicles being at the site.
14. It appears from the evidence and historic decisions, that agricultural activity has always been at a low level, certainly insufficient to justify the erection of

new agricultural buildings. However, the alleged new use does not include any reference to a tree surgery service yard or agricultural uses. For the above reasons, those uses appear to be continuing. The Council's appeal statement suggests that the primary use of the Land had become storage, but, not only is that not the allegation, it also does not appear to be the case. Rather, there appears to be a mixed use encompassing agriculture, a tree surgeon's service yard, and the storage, maintenance and repair of historic farm vehicles and equipment.

15. The materiality with which any such use differs from the previous use will be dependent upon the extent to which the uses are each carried out and that is a matter for an appeal on ground (c). However, for the reasons given, I find that the matters alleged in the Notice have not occurred, because the mix of uses at the site has not been properly described.
16. The appellant may not have appreciated the importance of setting out fully or in what proportion activities were going on across the whole site that may be relevant to ground (c). It could affect when any new mixed use started, relevant to ground (d), or whether operational development is integral to the change of use or not. Evidence provided for the ground (a) appeal could also be affected if a different use were identified.
17. For these reasons, if I were to correct the Notice to reflect the uses that I have found are ongoing at the site, injustice could be caused to both parties. I am, therefore, unable to exercise my power to do so.
18. Accordingly, the appeal on ground (b) succeeds, and the Notice must be quashed. In this scenario, the other grounds do not fall to be considered.

### **Formal Decision**

19. It is directed that the enforcement notice is corrected by:
  - In Section 5, paragraph a): after the word "vehicles", insert the words "not connected with agriculture or tree surgery". Delete the words "and uses ancillary thereto".
  - In Section 5, paragraph c): after the number "2", insert ",".
  - In Section 5, paragraph e): Delete the words "Excavate the driveway and hardstanding" and replace them with "Completely remove the driveway and hardstanding in their entirety".
20. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

*M Bale*

INSPECTOR