



Appeal Decisions

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st December 2024

Appeal A Ref: APP/Q3115/C/23/3320617

Appeal B Ref: APP/Q3115/C/23/3320658

Land at Overview Stables, Sandy Lane, Horspath, Oxfordshire OX33 1TF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Ms Emma Branch (Appeal A) and Mr Anthony Batey (Appeal B) against an enforcement notice issued by South Oxfordshire District Council.
- The notice was issued on 16 March 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of land from equestrian to residential use involving the construction of a dwellinghouse, associated incidental buildings and facilitating development such as the erection of timber fencing to create a garden area and the laying of a flagstone path in the area of Land hatched blue on the plan.
- The requirements of the notice are: (i) Cease the use of the Land for residential purposes. (ii) Remove from the Land all buildings, timber fencing, flagstone path and any other domestic paraphernalia associated with the residential use in the area hatched blue. (iii) Dig up and remove from the Land any hardstanding/hardcore or other materials that has been laid either to enable the erection of the buildings or the flagstone path. (iv) Remove all resultant debris and materials associated with undertaking steps (ii) and (iii) above. (v) Return the land affected to grass by laying topsoil commensurate with surrounding land levels and seed with grass.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f), and (g) of the Act.

Summary of Decision: The appeals succeed in part and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The main parties were invited to comment on *Caldwell*¹, which is pertinent to matters in the appeal under ground (f). Following the Court of Appeal's judgement, the appellant requested the opportunity to submit an appeal under ground (a) on account of the change in circumstances. It is not open to me to accept an appeal under ground (a) at such a late stage in the appeal process, even where circumstances may have changed due to new case law. This is not procedurally unfair and does not cause any injustice to the appellants.
2. It is incumbent on me to get the notice in order. The breach of planning control refers to a change of use of the land hatched blue on a plan attached to the notice. A change of use of land does not constitute development requiring planning permission unless it is a material change in the use of land². It is clear from reading the notice as a whole that a material change of use (MCU) of the land hatched blue is alleged. The breach of planning control stated in the notice can therefore be corrected accordingly without causing injustice to any parties³.

¹ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

² Sections 55 and 57 of the Act

³ Section 176 of the Act

Ground (d)

3. To succeed under this ground of appeal the appellant needs to demonstrate, on the balance of probabilities, that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control.
4. In addition to the MCU, the notice refers to the construction of a dwellinghouse. Subsections (1) and (2) of section 171B of the Act set out (at the time the dwellinghouse was substantially complete) that no enforcement action could be taken in respect of unauthorised operational development⁴ or the unauthorised change of use of a building to a dwellinghouse after the end of the period of four years, beginning with the date operations were substantially complete or the beginning of the change of use. In any other case, subsection (3) provided that no enforcement action could be taken after the end of the period of ten years beginning with the date of the breach.
5. The dwellinghouse was erected and first occupied in early 2014, as set out in the statutory declarations of the appellants. It is not disputed that the dwellinghouse was substantially complete more than 4 years before the notice was issued, or that the MCU took place less than ten years before the notice was issued. I see no reasons to reach different conclusions on these points.
6. I have been referred to *Welwyn Hatfield*⁵, where the Supreme Court held that while the Act contains a complete statutory code, the 'public policy principle' that no one should benefit from their own wrong may nonetheless apply. In that case, the actions of the developer amounted to positive deception and he was not entitled to rely on the provisions of section 171B(2) of the Act.
7. The appellants erected the dwellinghouse in the knowledge that it required planning permission. They also failed to register the dwelling to pay Council Tax and did not obtain Building Regulations approval. However, there is nothing to suggest they went out of their way to actively hide the building or its use from the Council. It may well have a passing resemblance to a stable building on account of its timber cladding and low-level design, but its entrance door, windows, television aerial and associated fencing were distinctly domestic in style and layout when a porch was added in August 2016. On the photographic evidence presented, I doubt any visitor to the site at that time would have mistaken it for an agricultural or equestrian building based on its external residential appearance.
8. It is within a secluded area which is not clearly visible from publicly accessible viewpoints, but those are the unavoidable circumstances of the site. Electricity bills were sent to Ms Branch's parents at another address, but this is not surprising considering the supply runs from a pre-existing connection to the wider equestrian site historically owned by them. The same applies to its water supply.
9. The dwellinghouse has been lived in by the appellants since early 2014, and by their daughter since she was born in early 2016, but there is no evidence that any steps were taken to conceal the residential use. Indeed, as well as the addition of the porch, I note that an engineer visited to install satellite television services in February 2015, midwives and health visitors attended the site before and after the birth of the appellants' daughter, and the roof was replaced in 2017. Furthermore,

⁴ building, engineering, mining or other operations in, on, over or under land

⁵ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC15; [2011] JPL 1183

the dwellinghouse benefits from a fenced off garden area and a shed. The evidence does not therefore support the view that the appellants were seeking to deliberately conceal the dwellinghouse or otherwise positively deceive the Council, even if they were hoping that the Council would not discover the breach of planning control.

10. Considering the above, I am satisfied that no enforcement action may be taken in respect of the operational development involved in the erection of the dwellinghouse, under the provisions of section 171B(1) of the Act. However, this does not ensure that its use as such is exempt from planning control. The enforcement notice is directed at the MCU of the land hatched blue to residential, which includes the footprint of the dwellinghouse. Therefore, although the building itself is lawful in planning terms, its residential use, and that of the other land hatched blue, is not.
11. I note reference to the Court of Appeal's findings in *Arun*⁶, but they have little relevance to this appeal. In this instance, a building was erected as a dwellinghouse from the outset, rather than an existing building changing use to a dwellinghouse. As there has not been a change of use of any building to use as a dwellinghouse, section 171B(2) of the Act (as it was at the date of the beginning of the breach) does not apply in this particular case. The MCU of the land hatched blue therefore falls to be considered under section 171B(3) of the Act. As there is no dispute that the unauthorised MCU took place less than 10 years before the notice was issued, it was not exempt from planning control at that time.
12. The appeals under ground (d) therefore succeed in part, insofar as they relate to the operational development involved in the erection of the dwellinghouse. I shall correct the notice by removing reference to the erection of the dwellinghouse from the description of the breach.

Ground (f)

13. To succeed under this ground of appeal the appellants need to show that the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
14. The notice requires the cessation of the residential use of 'the Land' and the removal of various items and operational development associated with that use, to restore the land affected to its former condition⁷. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.
15. Paragraph 2 of the notice identifies 'the Land' as that edged in red on the accompanying plan. That is an extensive area, within which a much smaller area is hatched blue. Paragraph 3 of the notice clarifies that the MCU has taken place on the land hatched blue.
16. As set out above, the operational development involved in the erection of the dwellinghouse is now exempt from planning control. The Council has since confirmed, following the findings in *Caldwell*, that the notice should not require the demolition of the dwellinghouse because it was fundamental to, or causative of, the MCU. I agree, and the steps required to be taken need to be varied because the

⁶ *FSS v Arun DC & Brown* [2006] EWCA Civ 1172

⁷ per section 173(4)(a) of the Act

dwellinghouse building will remain free to be used in accordance with the former lawful use of the land⁸.

17. However, other case law⁹, which remains relevant, has found that an enforcement notice directed at an unauthorised MCU may require the removal of works which are ancillary to, associated with, or facilitative of, the MCU where they were integral to, or part and parcel of, the making of the MCU. This is to restore the land to its former condition and applies even where such works were substantially complete more than four years before the notice was issued, or where such works do not comprise development requiring planning permission.
18. I have not been provided with evidence to show any fixtures, fittings or other items associated with the residential use of the land hatched blue could reasonably be retained for purposes associated with the former lawful use. This includes any kitchen cupboards, sink, cooker, bedroom and living room furniture, toilet and shower and television/satellite aerials within or on the dwellinghouse building.
19. With the above in mind, it is reasonable for the notice to require the removal from the land edged in red of all fixtures, fittings and items associated with the residential use of the land hatched blue, in addition to the demolition and removal of all buildings (other than the dwellinghouse), timber fencing and the flagstone path on the land hatched blue. I shall vary the steps required to be taken accordingly, while ensuring the notice does not require the removal of buildings and fences outside the land hatched blue. The notice's requirements will remain less onerous than before, and the variations will not therefore cause any injustice, unfairness, or undue disadvantage to the appellants.
20. The appeals under ground (f) succeed to the extent set out above.

Ground (g)

21. To succeed under this ground the appellants need to show that twelve months falls short of what should reasonably be allowed for the notice to be complied with. It is requested that this is extended to eighteen months.
22. I am mindful that the appellants have a young daughter, and it would be less stressful for them, and in the best interests of the child, to move into new accommodation over a school holiday period. Moving over a summer holiday period may avoid changing schools during the academic year. However, there is no evidence before me that it would be particularly difficult for the appellants to secure appropriate alternative accommodation in advance of the next summer holiday period. Moreover, it has not been shown that the appellants would be unable to secure appropriate alternative accommodation reasonably close to their daughter's school, or that a change of schools during term time would likely be necessary. I therefore see no justified reason to extend the compliance period on these bases, especially considering the dwellinghouse building does not need to be demolished.
23. Although fixtures and fittings will need to be removed from the dwellinghouse, there is no evidence that this, or compliance with any of the other requirements, would likely disturb or cause any harm to protected species, such as bats. Furthermore,

⁸ Section 57(4) of the Act

⁹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598; *Somak Travel v SSE & Brent LBC* [1987] JPL 630; and *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)

the twelve month compliance period would cover the 2025 summer survey season for bats, allowing such surveys to be carried out if needed.

24. The appeals under ground (g) therefore fail.

Conclusion

25. For the reasons given above, I conclude that the appeals should succeed in part on ground (d) and ground (f). I shall uphold the enforcement notice with corrections and variations.

Formal Decisions

26. The appeals are allowed in part on grounds (d) and (f), and it is directed that the enforcement notice is corrected and varied by:

- The deletion of the text 'change of use' at paragraph 3 of the notice and its substitution for the text 'material change of use';
- The deletion of the text 'a dwellinghouse,' at paragraph 3 of the notice;
- The deletion of step (i) at paragraph 5 of the notice in its entirety and its substitution for the text '(i) Cease the use of the land hatched blue on the attached plan for residential purposes';
- The deletion of step (ii) at paragraph 5 of the notice in its entirety and its substitution for the text '(ii) Remove from the building which has been used as a dwellinghouse on the land hatched blue on the attached plan all fixtures, fittings and items associated with its residential use, including the kitchen cupboards, sink, cooker, bedroom and living room furniture, toilet and shower and television/satellite aerials';
- The deletion of step (iii) at paragraph 5 of the notice in its entirety and its substitution for the text '(iii) Remove from the land edged in red on the attached plan all buildings (except that which has been used as a dwellinghouse), timber fencing, flagstone path and any other domestic paraphernalia associated with the residential use of the land hatched blue on the attached plan, including any hardstanding/hardcore or other materials laid either to enable the erection of any buildings (except that which has been used as a dwellinghouse) or the flagstone path on the land hatched blue on the attached plan'; and
- The deletion of step (iv) at paragraph 5 of the notice in its entirety and its substitution for the text '(iv) Remove all resultant items, debris and materials associated with undertaking steps (i), (ii) and (iii) from the land edged in red on the attached plan.

27. Subject to these corrections and variations the enforcement notice is upheld.

L Douglas

INSPECTOR