



Appeal Decision

Inquiry held on 3, 4 and 12 December 2024

Site visit made on 4 December 2024

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th January 2025

Appeal Ref: APP/Q3630/C/23/3317083

**Land to the rear of Acorn Farm, Village Road, Thorpe, EGHAM,
TW20 8UG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr John Doherty against an enforcement notice issued by Runnymede Borough Council.
 - The notice was issued on 6 February 2023.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of the land to a caravan site including the siting of caravans and mobile homes for residential use.
 - The requirements of the notice are to:
 - 5.1 Cease using the Land as a caravan site for residential use;
 - 5.2 Cease using the caravans and mobile homes on the Land for residential use;
 - 5.3 Remove all caravans and mobile homes from the Land;
 - 5.4 Remove the toilet and shower block building from the Land;
 - 5.5 Remove any further paraphernalia associated with the unauthorised residential use;
 - 5.6 Remove any resultant material and waste from the Land; and
 - 5.7 Return the Land to grass available for the grazing of horses.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) 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.
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Decision

1. The enforcement notice is quashed.

Applications for costs

2. Prior to closing the Inquiry two applications for costs were made. The first by Mr John Doherty against Runnymede Borough Council and the second by Runnymede Borough Council against Mr John Doherty. These applications are the subject of a separate decision.

Procedural matters

3. During the course of the appeal, the appellant added grounds (b) and (d) to his grounds of appeal. These changes are reflected in the above banner heading. As evidence of fact would now need to be heard with the potential for cross examination, it was considered that the most appropriate procedure would be by way of an Inquiry. The Inquiry sat on 3 and 4 December 2024, with closing submissions heard virtually on 12 December 2024.

4. During the Inquiry the Council withdrew their objections to the gravel hard surfacing and the toilet/shower block. The notice at paragraph 5, required both of these to be removed from the land. It was agreed that the notice could be varied in this regard without causing injustice.
5. A case management conference (CMC) was held on 3 December 2024. The purpose of this was to discuss how the appeal should be progressed and there was no discussion of the evidence. Following the CMC and on first reading of the various proofs of evidence, I had some concerns regarding the identification of the correct planning unit.
6. Consequently, both parties were contacted for their views on this. The Council were also invited to consider whether they wanted to withdraw the notice in advance of the Inquiry. The notice was not withdrawn and the identification of the correct planning unit remained in dispute. Since this is key to my decision, I shall consider this first.

The enforcement notice and planning unit(s)

7. It is the appellant's case that the breach, as alleged in the notice, has not occurred as a matter of fact. It is his view that the use taking place across the whole site is a mixed use for the keeping and stabling of horses for recreational purposes and as a caravan site. The mixed use has been occurring for a period in excess of 10 years and thus no enforcement action could be taken. To support his claim the appellant and members of his family gave oral evidence to the Inquiry.
8. In contrast, it is the Council's case, that the site comprises two separate planning units with the alleged breach taking place on a distinct part of the wider site that represents a separate planning unit within the appellant's ownership. The plan attached to the notice reflects this, identifying a particular part of the site, where a large number of caravans had been sited, for residential purposes. In support of their position the Council called three witnesses who gave oral evidence to the Inquiry.
9. Where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to incidental) uses of that unit. In *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*, it was held that 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 occupied for different and unrelated purposes; the concept of physical and functional separation is key. Three broad categories of distinction were suggested:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

10. The site is located to the north-west of Village Road, adjacent to the Thorpe settlement boundary within the Green Belt. The appellant purchased two plots of a wider agricultural holding in 2011. These two plots became known collectively as Acorn Farm. It appears from the aerial photographs that at the time of his purchase, the two plots were separated by a hedge. However, from the evidence given by the appellant there was a gate between the plots and the hedge had a number of gaps, allowing access from one to the other. It is not in dispute that following his purchase the appellant and his family used Acorn Farm for the keeping of recreational horses.
11. This is broadly consistent with the documented planning history of the site, with various permissions relating to the keeping of horses on the site granted between 2012 and 2016. These include a certificate of lawful development granted under RU.12/1247 for the keeping and stabling of horses and further planning permission granted in 2015 for stables, feed room and a tack store.
12. I acknowledge that the various applications indicated the location of the proposals within various red lines. However, this can come about for a number of reasons, and they are not in themselves, determinative of the planning unit. It is necessary to consider all of the available facts. Similarly, the construction of internal fencing alone is not necessarily indicative of a new planning unit. It is both the physical and the functional relationship between the different uses taking place on the land that need to be considered.
13. I have nothing before me to suggest that the equestrian activity is of such a scale that it is, or has been, merely incidental to the residential use. At the time of my visit there were 6 stables that appeared to be in use and some 7 ponies turned out in the paddocks.
14. All parts of Acorn Farm are accessed through the gated entrance from Village Road. There were a number of paddocks, separated by fencing. Field gates give access to the stables, menage and the remainder of the site. The Council has drawn my attention to the gate under the archway of the stables between the stable yard and the area where the subject caravans have been sited. It is their view that this separation of the two areas is sufficient to establish a separate planning unit.
15. It is pertinent to note that, within the area indicated on the notice plan (as issued), lies part of the stable building, together with the toilet and shower block. Moreover, at my visit and in the Council's photographs, alongside the caravans, there are also equestrian related items, including a muck disposal container, a number of large round hay bales, a horse trailer and pony traps. These factors strongly point to both activities taking place throughout Acorn Farm. Moreover, where there is a mix of residential occupation and the keeping of livestock it is not uncommon for there to be some internal fencing and gates to keep residents and animals safe and contained, without them amounting to physically and functionally distinct areas.
16. Furthermore, the appellant's evidence does not need to be corroborated with independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence is sufficiently precise and unambiguous. The appellant and members of his family gave clear and compelling evidence on how they

have used Acorn Farm throughout their ownership, for the keeping of their horses and as their family home.

17. It is clear that the site has evolved over the years with additional paddocks, stables and associated yarded areas created, formalising the equestrian and residential activities. However, from the oral and written evidence, the various photographs and my observations on site, there are no clear and distinct areas that can be identified as being both physically and functionally separate, such that they create separate planning units.
18. For these reasons in my judgement and based on the evidence before me, I find, as a matter of fact and degree, and on the balance of probability that the whole of Acorn Farm comprises a single planning unit for the purposes of considering the materiality of the alleged change of use.

Intensification

19. It follows that I now need to consider whether the notice can be corrected and varied to reflect the above findings, without causing injustice. The intensification of an existing use may amount to a material change of use, if and where it causes the character of the use to change in a fundamental way. It applies when the former and present uses can only be distinguished in terms of scale and effects related to scale.
20. The thrust of the Council's case from the outset, was based on the premise that the site was in more than one planning unit. The additional caravans had been sited on a part of the site that was used solely for the siting of caravans for residential purposes and thus a material change of use had occurred. Nonetheless, during the Inquiry, they provided a proposed amended draft notice and plan (Draft-version 2). They consider that the various proposed corrections would then reflect an allegation of a material change of use by intensification, without causing injustice to the appellant.
21. The Council accepted that they had not carried out a detailed site visit prior to issuing the notice, relying instead on aerial photographs and other available evidence. They attributed this to a lack of co-operation from the appellant to allow officers onto the site. The legal advice they received when considering their rights of entry were that in their experience, a warrant to enter the land would not be forthcoming. Therefore, they took no further action to formally enter the land to investigate the alleged breaches of planning control. As a result, there seems to have been a lack of clarity about the number of planning units, which varies in the written evidence between two and three and the physical and functional relationship between the uses taking place within Acorn Farm.
22. I acknowledge that in Mr Coleman Fry's Proof of Evidence (from paragraph 7.40 to 7.44), he addressed the question of material intensification, in the light of his acceptance that one residential caravan on Acorn Farm was already lawful. In cross examination, he further accepted that an increase in the number of caravans from one to six, or perhaps seven, would be unlikely to be enforceable.
23. I have carefully considered the suggested corrections and consequential variations. In short, corrections would be required to; paragraph 2 – The Land to which the notice relates; Paragraph 3 – The allegation; and at Paragraph 5

– the requirements. The plan attached to the notice would also need to be substituted by the one suggested.

24. However, since the notice did not allege a material intensification of an existing use, these extensive corrections would result in a significantly different notice to the one that was issued. Moreover, without a clear understanding of the allegation and the precise steps that would be required to remedy the breach of planning control from the outset, I consider that the appellant would have been at a significant disadvantage when structuring his case for this appeal.
25. For the above reasons, I am not satisfied that I can carry out the suggested corrections and variations to the notice, without causing injustice to the appellant. Moreover, if I was to correct the notice and vary the requirements as has been suggested, this would affect the deemed application under ground (a).
26. In addition, the steps suggested in the amended notice would result in the likelihood that at least some of the caravans would be moved into the area closest to the main access and the adjacent grassed paddock, (shown in blue hatching on the proposed replacement plan). This would undoubtedly bring the caravans closer to Village Road and existing residential properties. I am therefore also mindful that those residents would be denied the opportunity to comment.
27. For these reasons, I shall quash the notice as invalid and incapable of correction without causing injustice to the appellant, or other relevant occupiers as defined in s174(6). I would however point out that the Council could consider issuing a second notice under the second bite provisions found in s171B(4)(b) of the Act.

Other Matters

28. On 12 December 2024 the latest National Planning Policy Framework was published, which may have been relevant to this appeal. However, since I am quashing the notice there is no need to revert to the parties for their comments or consider this further.

Conclusion

29. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance or the land where the breach of planning control is alleged to have taken place.
30. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is therefore invalid and will be quashed.
31. In these circumstances, the appeals on the grounds set out in section 174(2) (a), (b), (d), (f) of 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 does not fall to be considered.

Hilary Orr

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd of Counsel Kings Chambers instructed by the Appellant

He called:

Nick Laister	Planning Agent
John Doherty	Appellant
Esther Ann Doherty	Appellant's wife
Esther Doherty	Resident
Francis Doherty	Resident
Marydoll Doherty	Resident

FOR THE LOCAL PLANNING AUTHORITY:

Dr Sam Fowles, of Counsel from Cornerstone Barristers instructed by the Council.

He called:

Tom Coleman Fry	Runnymede Borough Council,
Georgina Pacey	Runnymede Borough Council
Christine Ellera	Runnymede Borough Council

Documents handed in at the Inquiry:

1. Appeal decision for APP/V1505/C/23/3314641 Land at Canford Avenue, Wickford, Essex SS12 0JN
2. Appellant's Opening Statement
3. Council's Opening Statement
4. Two draft, proposed amended notices (Draft version-1 and 2) and associated plans, annotated to address any required corrections/variations to the notice.