



Appeal Decision

Site visit made on 8 October 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2025

Appeal Ref: APP/J0405/C/23/3321010

Land at Hedgehogs Haven, Preston Road, Tingewick, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Cheralyn Susan Linton-Allen against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 17 March 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land to a mixed use of agricultural, equestrian and storage (Use Class B8).
- The requirements of the notice are to:
 - Step 1 – Permanently cease the storage of items which are not reasonably required for agricultural and equestrian purposes, including but not limited to, static caravans, touring caravans, shipping containers and outbuildings.
 - Step 2 – Permanently remove the static caravan (shown in the approximate location and cross hatched in black on the attached Plan 2) and four (4) touring caravans (shown in the approximate locations and hatched in black on the attached Plan 2), from the Land.
 - Step 3 – Permanently remove the blue shipping container and yellow outbuilding shown in the approximate locations on Plan 3, from the Land.
 - Step 4 – Permanently remove from the Land, any debris or materials that arise as a result of complying with Steps 1, 2, and 3 of this Notice.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. Since the submission of the appeal the Government has issued a revised National Planning Policy Framework (the Framework). In relation to the main issues in this appeal the advice of the Framework has not materially changed. As such there would be no prejudice in my considering the appeal in light of the revised Framework.

Ground (d)

3. This ground of appeal is that, at the time the enforcement notice was issued, it was too late to take enforcement action. The notice alleges a material change of use of the land, which has been facilitated by the stationing of structures on the land. Accordingly, the change of use would be immune if it had taken place

10 years or more before the service of the notice. Therefore, the relevant date is 17 March 2013. The test for the consideration of this ground of appeal is on the balance of probabilities.

4. The Council set out that it considers that the material change of use from a mixed agricultural and equestrian use, to a mixed agricultural, equestrian and storage use (the unauthorised mixed use) took place in approximately late autumn 2014. The appellant has not suggested that the change of use has not occurred, or that it occurred at a different point in time. Therefore, the change of use did not occur before the relevant date, and it is not immune from action.
5. The Notice seeks the removal of structures that are within the site and associated with the unauthorised mixed use. These include a static caravan and four touring caravans, as well as what is referred to as a yellow outbuilding which is a small cabin-like structure. From my observations and given the lack of any contention to the contrary, these structures are mobile and comprise a use of the land, rather than being building operations. As the allegation in the Notice refers to a change of use of the land, these structures are part of that use and thus it is not too late to seek their removal.
6. In addition to the above structures, there is also a shipping container currently present on the land. From my observations of the container, given its size and that it appeared to be anchored to the ground under its own weight, I am of the view that it comprises a building operation, rather than a use of land.
7. The appellant sets out that as part of the appeal under ground (d) it is contended that the blue shipping container has been on site "probably since 2009". In support of this, they have provided a copy of Land Registry documents that were obtained during the purchase of the site in 2014, which it is contended show the location of the shipping container, as lines on the Land Registry plans. However, it is unclear what the lines on the plan actually refer to. There is the possibility that some buildings are shown, however it cannot be reasonably inferred that the line to which the appellant refers is actually the shipping container, this is particularly so given that the line joins another which extends to the east and appears to comprise part of a boundary or enclosure that is shown on the plan.
8. A number of aerial photographs have also been provided, dated 2009, 2013 and 2015. The appellant indicates on the 2009 photograph that there is no shipping container present. However, the photographs for 2013 and 2015 have been annotated, by the appellant, with arrows pointing towards a feature which is labelled as the container. The photographs do appear to show an undistinguishable item partially located beneath tree cover and the appellant accepts that it is "almost invisible" in the aerial images. However, it is not possible to say with any reliability that this item is a, or indeed the shipping container.
9. The appeal also includes photographs of the structures on site, including a touring caravan and the shipping container. However, while these photographs are reflective of what I observed at the time of my site visit, they are undated and thus do not provide any comfort in respect of when the shipping container was brought to the site.

10. It has been contended by the Council that the shipping container was placed on the land in 2017 and there is nothing substantive to show that it was present earlier than this. There is insufficient evidence to demonstrate that the siting of this container was lawful as part of the previous mixed use that took place. Therefore, despite it being a building, even if it were sited for a period of four years since the change of use occurred, it is clearly part and parcel of, and facilitating, the current unauthorised mixed use and as such, its removal can legitimately be sought under the notice.
11. Additional evidence provided by the appellant includes the provision of a letter from the appellant's solicitor, dated 22 July 2014, which confirms the exchange of contracts for the purchase of the land, with completion envisaged within a few weeks. Yet, there is no reference within the letter to any structures that may be present on the land and so this adds little to the appellant's case.
12. It is also stated that one of the caravans should be retained, as it was present on the land when the appellant purchased the site in 2014. However, as set out above, there is no substantive evidence to show that this was in-situ at the relevant date. Moreover, given that the Notice enforces against a use of the land, of which the siting of the caravan is part, it should be removed.
13. Considering the above, I find that there is insufficient evidence before me to show, on the balance of probability, that it is too late to take enforcement action against the breach of planning control. Therefore, that which is alleged in the Notice is not immune from enforcement action. Thus, the appeal on ground (d) fails.

Ground (a) – the deemed planning application

Main issues

14. The main issues in regard to the deemed planning application are:
 - The effect of the development on the character and appearance of the area,
 - The effect of the development on biodiversity, and
 - Whether the development is served by adequate infrastructure and services.

Reasons

Character and appearance

15. The appeal site comprises a narrow area of land located alongside Preston Road. It is enclosed along the road by mature hedging and trees, which to a large degree filter views into the site. Nonetheless, the structures present remain visible due to glimpses through the boundary vegetation and such views are likely to be more significant during the winter months when there is less foliage present. The wider area has a distinctly rural nature, with generally only limited and sporadic development visible when travelling along the road.
16. The structures that are visible within the site, in addition to the authorised and/or lawful buildings that are present, in light of their number and

positioning, appear as incongruous features within what is a locality which is typified by its undeveloped nature. The storage of the structures on the site therefore has a deleterious effect on the character and appearance of the area by introducing unjustified visual clutter into the locality.

17. In this respect, the development conflicts with the requirements of policy BE2 of the Vale of Aylesbury Local Plan (the VALP), insofar as it seeks to ensure that development respects and complements the natural qualities of an area. There is also conflict with Section 12 of the Framework and the relevant sections of the National Design Guide.

Biodiversity

18. The Council indicates that the appeal site is located within an Amber Great Crested Newt Risk Zone, denoting that it comprises suitable habitat for this species and that they are likely to be present. While no protected species survey has been provided and the appellant indicates that they have never seen the species on the site, they also accept that the additional caravans that are being stored do restrict the potential for wildlife to move through the site and that their removal would enhance wildlife opportunities. Given the lack of any evidence demonstrating otherwise, and adopting a precautionary approach, I find that the use of the site for the storage of items is likely to have a deleterious effect on biodiversity. Accordingly, the development conflicts with the requirements of policy NE1 of the VALP, section N3 of the National Design Guide and Section 15 of the Framework, insofar as they seek to ensure biodiversity is protected and enhanced.

Infrastructure and services

19. There is no suggestion that the storage use is being operated as a commercial operation and it is my understanding that the structures are stored by the appellant only. Given that there are likely to be trips to the location for the owner to tend to horses and maintain the site, and that the storage of structures takes place for their own use only, I find that it is unlikely that the development would result in additional traffic movements to and from the site and that requiring accessibility by public transport would be overly onerous. Moreover, I can see no reason, and it has not been adequately shown, why bin storage would be necessary for the alleged use, and even if it were, this matter could straightforwardly be dealt with by planning condition.
20. There is reference to the lack of drainage facilities, in particular the possibility of soil and water contamination. Yet there is nothing substantive to show that the storage of caravans and other structures on the site would result in such an adverse effect.
21. In this light, I find that there would be no conflict with policies S5, I4 or I5 of the VALP, insofar as they require that appropriate on and off-site infrastructure should be provided by development.

Other Matters

22. The appellant has indicated a willingness to remove all structures from the site, apart from the container and one caravan. Little evidence has been submitted in respect of a genuine need for these elements of the development, as such I am unable to conclude on the evidence before me that the retention of these structures is acceptable. The Council has indicated that

if they were satisfied that such items were ancillary to the approved use of the land, that enforcement action may not have been pursued. As such, the potential retention of any structure as part of the authorised use is a matter for discussion between the appellant and the Council.

23. The Council refers to policy C2 which refers to equestrian development, as well as policy E9 which refers to agricultural development. However, the Council accept that the authorised use of the site is both agricultural and equestrian, and it is the storage use that is objected to. As such, as the lawful use can be reverted to, which includes an equestrian and agricultural use, I do not consider these policies to be relevant to my consideration of the development that is enforced against.
24. There is further reference to policy I3 and the Council contend that there is no reference to how the development benefits the local community, indicating that this is in conflict with policy I3. However, from my reading this policy is in relation to the protection of existing community facilities and the provision of new facilities in conjunction with residential development. It does not impose a policy requirement for all development to benefit the local community. As such, this has little bearing on my decision. Furthermore, and in any event, I find nothing that would lead me to conclude that the development would result in harm to the local community, and therefore I find no conflict with policy S1 in this respect.
25. The Council have raised within its statement that the development may prejudice the extraction of mineral resources that lie beneath the appeal site. Given that this matter was not stated as a reason when issuing the enforcement notice, and that I am dismissing the appeal in any event, I have not considered this matter further.

Overall finding on Ground (a)

26. While I find that there would be no adverse effect in respect of the provision of appropriate infrastructure, I find that there would be harm to both the character and appearance of the area, and to biodiversity. These harms are decisive. The development conflicts with the requirements of the development plan when taken as a whole, and there are no material considerations sufficient to indicate that a decision should be taken otherwise than in accordance with the development plan. Thus, the appeal under ground (a) fails.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Martin Allen

INSPECTOR