



Appeal Decision

Site visit made on 3 December 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Appeal Ref: APP/Q9495/C/23/3333633

Land at Croft House, Berrier, CA11 0XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeal is made by Mr Roger Savage against an enforcement notice issued by the Lake District National Park Authority.
 - The notice was issued on 27 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land and building from use as agriculture to use for the landing and take-off of gyrocopters/gyroplanes for commercial use, and for agriculture.
 - The requirement of the notice is to: (1) Discontinue the use of the Land and building for the landing and take-off of gyrocopters/gyroplanes for commercial use.
 - The period for compliance with the requirement is two months.
 - The appeal is made on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990, as amended (the Act).
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The enforcement notice alleges that there has been a material change of use of the land from use as agriculture to use for the landing and take-off of gyrocopters or gyroplanes for commercial use, and for agriculture; resulting in what I would describe as a mixed use. I make two observations about the allegation, with the first being that, while an enforcement notice does not strictly need to specify what the material change of use is from, it is important in this case that the Local Planning Authority (LPA) considers the pre-existing use to have been agriculture alone.
3. My second observation is that, for there to be a material change of use of land, there has to be a significant change in the character of the activities taking place. In that sense, it may not necessarily matter whether activities are carried out on a commercial or non-commercial basis. It is more important to focus on the nature of the activities, in this case the landing and taking off of gyrocopters or gyroplanes, and the extent of those activities and any consequent effects in planning terms.
4. I make this point because the evidence shows that, in 2012, the LPA gave a view that the use for the landing and take-off of gyrocopters/gyroplanes by the appellant for personal use, and in association with his aerial photography business, had been carried out for a period of at least 10 years and so was probably immune from enforcement action. Without sight of all the evidence that informed that view, I am not bound to agree with this, and I make no determination as to the lawfulness of the use in 2012. Nevertheless, whilst I note that the LPA has made no formal determination in this regard, it does not appear to have changed its previous opinion.

5. In 2012, the LPA understood that the gyrocopter/gyroplane element of the mixed use was carried out by the appellant alone for the purposes of personal recreation and his own aerial photography business. Since then, the LPA considers that things have changed insofar as the flights now involve paying customers visiting the site. The LPA is concerned that there has been an increase in taking off and landings, and in associated activity, such as people driving to the site, and in associated effects upon the area such as noise and disturbance to nearby residents.
6. The inclusion of the term 'commercial' in the allegation is therefore unhelpful because whether the gyrocopter/gyroplane element of the mixed use was personal or commercial does not necessarily denote any difference in the character of the activities taking place. This point is especially relevant because, even when the use was 'personal', there was a commercial element in that some of the flights were for the purposes of the appellant's aerial photography business.
7. I make no judgment as to the significance of any effects of the 'commercialisation' of the use, if indeed that has happened at all. However, it is clear to me that the alleged breach of planning control has been misdescribed. The LPA is not concerned about a change of use from agriculture to agriculture plus the gyrocopter/gyroplane use. Although they have not expressed it in these terms, the LPA is plainly concerned that there has been a material escalation or intensification of the gyrocopter/gyroplane element of the mixed use. The reasons for issuing the notice refer to the level as well as type of activity on the site.
8. It follows that the notice misdescribes the breach of planning control and I must consider whether it can be corrected without injustice being caused to the LPA or appellant. It is important that the alleged breach of planning control is expressed correctly to ensure that the parties can set out their respective cases in full, with the appellant having understood what is alleged and having had a fair opportunity to pursue all relevant grounds of appeal.
9. The parties were consulted over whether the allegation could be corrected in this respect. Both parties were of the view that there would be injustice in me correcting the allegation. I agree. If I were to delete the word "commercial" from the notice, so that it is simply focussed on the introduction of the mixed use, that would cause injustice to the LPA because the purpose of the notice is plainly to address the (purported) effects of the use being intensified via commercialisation.
10. However, if I correct the notice so that it alleges a material change of use through the intensification of the gyrocopter/gyroplane element of the mixed use, that will cause injustice to the appellant. It would undermine their case for the grounds of appeal he has pleaded, when it is too late for him to plead ground (a)¹ or to provide substantive evidence in support of a case on ground (c)² to the effect that any intensification, if it occurred, did not result in a material change. Therefore, I am unable to correct the notice without causing injustice to either party.

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open

¹ That planning permission ought to be granted; ground (a) gives rise to a deemed planning application for which a fee must be paid early in the appeal proceedings

² That the matters alleged, if they occurred, do not constitute a breach of planning control.

for me to correct the error in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused were I to do so. The enforcement notice is therefore invalid and will be quashed.

12. In these circumstances, the appeal on the grounds set out in section 174(2) (b) and (d) do not fall to be considered. Without prejudice, it is open to the LPA to issue a fresh notice having regard to section 171B(4)(b) of the Act and/or for the appellant to apply for a Lawful Development Certificate under section 191 of the Act to seek to ascertain the lawfulness of the existing use of the land.

J M Tweddle

INSPECTOR