



Appeal Decisions

Site visit made on 7 January 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04th February 2025

Appeal Ref: APP/J0405/C/22/3312227

Land to the south-west side of Wendover Road, Stoke Mandeville, Bucks, HP22 5GX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Westside Land Ltd against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice was issued on 31 October 2022.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 10/00047/APP granted on 28 July 2010.
- The development to which the permission relates is the Change of use of adjacent agricultural field to car park.
- The condition in question is no6 which states that: 'The car park hereby permitted shall not be used or (sic) for any other purpose other than as a car parking area used in association with the units at Triangle Business Park.'
- The notice alleges that the condition has not been complied with in that: the Land now has a mixed use of independent car park, depot (scaffold and building) (sui generis), and storage (B8).
- The requirements of the notice are to:
 1. Cease the use of the Land for parking of any vehicle, other than cars associated with the units at Triangle Business Park.
 2. Cease the use of the Land for open storage, commercial and depot use.
 3. Permanently remove all structures and buildings, from the Land.
 4. Permanently remove all vehicles, caravans, trailers, plant and equipment from the Land.
 5. Permanently remove all stored items from the Land, including but not limited to building materials, scaffolding equipment, skips, rubbish and materials or items associated with any adjoining land use, from the Land.
 6. Permanently remove from the Land, all debris created through compliance with steps 1 to 5.
 7. Close up the vehicular access from the Waste Transfer Access Road shown with a black X on the attached plan.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) 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 enforcement notice is quashed.

The Notice

2. The Council served an enforcement notice described under paragraph (b) of s171A of the Act alleging a breach of condition. The condition was applied to a planning permission for the use of the Land as a car park in association with a nearby business park.
3. Although the Council's stated reasons for serving the Notice include parking within a mixed use, the evidence provided by the main parties in the appeal is primarily concerned with a material change of use of the Land. At the time of my site visit, the parking taking place on the site appeared only incidental to other main uses

such that the mixed use of the Land did not necessarily include a car park as a primary use at all.

4. In addition to the Council's reasons for serving the Notice, all steps apart from Step 1 in Section 5 of the Notice concern unauthorised uses of the site and associated operational development. In the context of a condition within the confines of a planning permission for a car park, Steps 2-7 do not relate to and extend beyond the scope of the alleged breach. The requirements to remove operational development not referred to in the allegation could only be addressed if a material change of use was alleged and the *Murfitt*¹ principle subsequently applied. The Notice does not refer to operational development in the allegation.
5. The allegation in the Notice does not therefore accurately reflect the nature of the breach of planning control. As a matter of fact, the land use when the Notice was served could no longer be regarded as being in a single use as a car park to which the relevant condition applied.
6. Under s174(2) an appeal on ground (a) against the breach of condition allegation is limited to an outcome that the condition or limitation concerned ought to be discharged. In the case circumstances the Council accepts that the Condition could not legitimately be complied with. Success on ground (a) could only achieve the use of the Land for car parking – unencumbered at best.
7. Having regard, to the fact that the enforcement procedure is intended to be remedial rather than punitive², if I were to persist in that format, consideration of much of the appellant's submissions would lie outside the scope of the appeal. In effectively limiting considerations to the terms of the previous lawful use of the site, the Council has deprived the appellant of the opportunity to regularise the actual use that the Land has been put to alongside any associated incidental use/s or operational development that has been carried out. Additionally, according to the appellant, he has paid an appeal fee for the material change of use of the Land such that a legitimate expectation for those matters to be considered should fairly and reasonably be anticipated.
8. Section 176 of the Act gives me wide powers to correct any defect, error or misdescription in the notice, however, I can only do so if I am satisfied that it will not cause injustice to the appellant or the local planning authority.
9. The evidence shows that a material change of use of the Land has likely occurred. However, while the reasons for serving the Notice specify a mix of uses taking place on the Land, I cannot be sure that the mixed use referred to correctly reflects the primary uses that were taking place at the time the Notice was served, which (if any) uses were incidental, or whether they encompass all uses then taking place. Furthermore, the Council confirms that the use of a portable building shown to be sited on the Land when the Notice was served (now a gym) was unclear and is not specified in the Notice.
10. Any narrowing or widening of the alleged uses would likely cause injustice to the parties. This could arise from limitation on the grounds of appeal submitted, through an inability to now mount additional grounds not pleaded, the involvement of additional parties, or as a result of any mismatch between the allegation and

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

² *Tapecrown Ltd v FSS & the Vale of White Horse DC* [2006] EWCA Civ 1744

requirements of the Notice such that the provisions of s173(11) of the Act is engaged.

11. Moreover, any potential effects of any or all of those uses, including the use of ancillary structures, siting of containers, temporary buildings and matters of access are unlikely to have been fully represented through the breach of condition enforcement notice appeal. Accordingly, there is a strong risk of causing injustice to the parties.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.
13. 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 invalid and will be quashed.
14. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (f) and (g) 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) do not fall to be considered.

R Hitchcock

INSPECTOR