



Appeal Decision

Site visit made on 9 May 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 06 February 2025

Appeal Ref: APP/N0410/C/23/3321178

Land at Denham Mount, Blacksmiths Lane, Tatling End, Buckinghamshire, UB9 4HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Blacksmiths Palace Ltd against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 9 March 2023.
 - The breach of planning control as alleged in the notice is 'without planning permission, a material change of use to a (sui generis) mixed use, comprising residential, agricultural and the commercial parking of vehicles (the "Unauthorised Use") and integral to the unauthorised mixed use, the laying of hardstanding'.
 - The requirements of the notice are to:-
 1. Cease the use of the Land for the commercial parking of vehicles;
 2. Remove all vehicles brought onto the Land in connection with the unauthorised element of the mixed use, from the Land;
 3. Rip up and remove the hardstanding (shown in the approximate position hatched on the attached plan) from the Land;
 4. Remove from the Land (shown in a thick black line) all materials and debris resulting from complying with Steps 1 to 3 of this notice.
 - The period for compliance with the requirements is: four months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Act. 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.

Matters concerning the notice

2. Inspectors have a duty to get the enforcement notice in order. If a notice is considered to be defective, section 176(1)(a) of the Act provides a broad power to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the notice. However, I can only do so where I am satisfied that the correction or variation would not cause injustice to either the appellant or the Council. If a notice cannot be corrected, the notice must therefore be quashed.
3. The site identified in the notice is substantial in size. The allegation stated in the notice is an alleged material change of use to a (sui generis) mixed use comprising residential, agricultural and the commercial parking of vehicles (the unauthorised use) and integral to the unauthorised material change of use, the laying of hardstanding. Where a material change of use is alleged, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit.

4. 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. Three broad categories of distinction have been suggested when considering the planning unit:
- A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - 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
 - 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.
5. At the time of my site visit, I observed the majority of the site and noted a number of activities were taking place. I subsequently wrote to the parties explaining what I had observed and sought their comments. Whilst the Council provided their comments in response, the appellant has not provided any response despite a number of requests to do so. I shall therefore base my assessment on the submissions and evidence submitted to date.

Erection of canopied structure, vehicular sales, repair and maintenance of vehicles

6. During the visit, I saw a sizeable number of motor vehicles, mainly vans, neatly arranged in rows upon an area of hardstanding (which roughly corresponds with the area shown hatched in black in the plan attached to the enforcement notice). A canopy type structure comprised of metal poles and sheet metal roofing was situated towards one corner of the hardstanding. It appeared to be laid out as a number of bays and contained equipment for vehicular cleaning together with cleaning products and jet wash. Other bays contained a two post vehicle lift and various other machinery including wheel balancer, tyre machine, air compressor and other paraphernalia and tools that are commonly associated with the repair and maintenance of motor vehicles. Two vehicles were present underneath the structure and a van was seen to be washed at the time of the visit. A vehicular windscreen display board reading 'SOLD' was positioned at the rear of canopy structure. To one side of the canopy structure was a metal shipping container which contained a number of spare tyres and a bumper. At the corner of the hardstanding in close proximity and opposite to the gated access onto Hollybush Lane, signage for 'customer parking' was laid on the floor.
7. The u-shaped barn buildings (the "Cart Barn") to the rear of the Coach House included signage towards the corner of that building stating 'Office' and an arrow pointing in the direction of the Coach House. A further 'Office' sign was noted to be positioned on the corner of the Coach House pointing in the direction of the rear of the Coach House. The door at the furthest end of the rear of the building included signage above it stating 'MOTOR2GO We deliver excellence'.
8. On entering the Coach House, the ground floor was noted to comprise a number of rooms including a kitchen with sink, hob, microwave, kettle, toaster and washing machine. The kitchen also contained a pile of vehicular pricing boards that would commonly be used to sit within the front windscreen of a vehicle and advertise its

sale status and price. Several of these pricing visors included figures and there were a number of jump starter power packs placed on the kitchen worktop.

9. The first floor of the Coach House contained a number of rooms. One room was set out as a prayer room with signage on the door stating it was a 'multi faith prayer room'. A further room contained a bath, shower, sink and toilet with a unisex toilet sign on the door. Other first floor rooms were laid out to include one or two desks with moveable office chair and computer. Static conference type chairs were positioned on the other side of the desks. These rooms also contained printer/photocopier and some included a telephone, filing cabinet and settee or easy chair. A number of desks included paperwork and several vehicle keys on individual key fobs were noted on one of the desks. Several smartly dressed individuals were present within the building with some individuals working on computers. An area of outdoor seating was laid out to the side of the entrance doorway.
10. To the side of the outdoor seating, there was a further door leading into a room with stairs leading to the first floor. The interior of the first floor room was not observed. The door was said to be locked and the appellant did not have access into it. The ground floor was observed as being predominantly used for storage. It contained a variety of tools, a ride-on lawn mower and various car parts including seats from vehicles, boxed car parts such as oil filters, seat cover protectors and several containers of AdBlue. The Cart Barn was storing various items including a part of a front bumper to a vehicle.
11. Beyond the Coach House there was a greenhouse and tennis court, both of which were observed to be in a dilapidated condition with some limited vegetation observed to be growing through the surface of the tennis court.
12. Based upon these observations, I formed the view that the hardstanding was not solely concerned with the storage of vehicles, but with the repair, maintenance and preparation of vehicles for sale and together with the use of the Coach House as offices, it appears likely that the sale of vehicles was being undertaken. Given that the enforcement notice did not allege use of the site for car sales, repair and maintenance nor any operational development consisting of the canopied structure, I therefore sought the parties' comments on this matter.
13. The appellant did not respond. However, the Council confirmed that at the time of the notice being issued, the canopy structure had not been erected and there was no evidence of vehicular sales having taken place. Any repair or maintenance of vehicles, if it did occur, would have been ancillary to the primary use. The Council states that its enquiries with the appellant's agent indicated that vans were on site purely for storage purposes on a temporary basis whilst a previous property was undergoing maintenance.
14. As the appellant has not provided any response nor sought to disagree with the Council's account, it appears likely that the allegation is correct insofar as it does not include any vehicular sales, maintenance and repair.

Residential use

15. Whilst I did not go inside 'The Lodge', 'The Garden Cottage' or 'Green Tiles', these properties appeared to be in residential use. Access to The Lodge appears to be shared and is via the gated access onto Blacksmiths Lane which is also the

access for the long driveway to 'Denham Mount'. Access to Garden Cottage can be gained independently of the appeal site from Hollybush Lane. However, a gated entrance onto Hollybush Lane is just a short distance away and is signposted as the access to Green Tiles and Garden Cottage. There is no independent access to Green Tiles from Hollybush Lane. Low level fencing and some vegetation serve to physically delineate those properties from the wider appeal site, albeit there are several gates within those boundaries which provide access between those properties and the wider site. Some physical delineation of these residential properties from the wider site was evident and therefore I sought the views of the parties as to whether these were separate planning units in their own right.

16. In response, the Council commented that the residential units known as the Lodge, The Garden Cottage and Green Tiles should be removed from the plan accompanying the notice and that these areas would fall outside the scope of the notice at appeal. However, it is not clear why the Council have taken a different view on this matter. Within the Council's enforcement notice report they state that the unit of occupation is the appropriate planning unit and they identify *'the wider parcel of land as the planning unit given that the site is in one ownership, and there is no functional or physical separation'*. Notwithstanding some physical delineation that I have identified, there is an absence of information regarding whether those properties were occupied at the time the notice was served and, if so, whom they were occupied by and whether those individuals were the appellant, his family or an employee of the appellant's business operation(s). In the absence of information, it has not been shown why the Council regard those dwellings as being functionally separate to the wider site.

Hotel or guest house use (Use Class C1)

17. In addition, at the visit, I also noted that the building named 'Denham Mount' was comprised of a number of bedrooms at ground, first and second floor level. Each was individually named and had its own ensuite bathroom/shower room facilities and was contained behind a locking door. The ground floor also comprised of an office, several communal sitting/eating areas and a fully equipped kitchen and laundry room. The basement was largely empty. A ground floor flat comprising double bedroom, ensuite shower room and small living room was also present. The entrance hallway contained a guest book with several reviews and comments purportedly left by visitors to the property together with a framed list of 'House Rules' referring to, among other things, check in and out times, lost keys and limits on guest numbers. Extensive grounds surround Denham Mount and include manicured gardens, an icehouse, a lake with several dining pods set to one side and other outbuildings.
18. I queried my observations of the use of Denham Mount with the parties and explained that my initial view was that Denham Mount appear to form part of the wider site. Notwithstanding that the building had the appearance of being in use as a hotel or guest house (C1 use) at the time of my visit, the Council state that a hotel or guest house use was not occurring at the time of the notice being issued. Given that an enforcement notice cannot attack things that had not occurred by the time the notice was issued, my consideration is therefore to what had occurred at that time and I am therefore satisfied that the allegation does not need correcting to include a use as a hotel or guest house (C1 use). In addressing this point, the Council point out that 'the area that is now used as a hotel/guest accommodation would form its own planning unit and should therefore fall outside of the scope of

this notice. However, for the purposes of this appeal, what is relevant is what had occurred by the time of the notice being issued and in this instance, it is the Council's view that a hotel use had not commenced. I shall therefore treat Denham Mount as forming part of the wider site and thus part of the planning unit.

Agriculture

19. That part of the site beyond the hardstanding, ice house and lake and which shares a boundary with Froggy Lane were large agricultural fields, a number of which were being grazed by cattle at the time of the visit. Whilst access to these fields is possible from within the appeal site, a number of independent accesses via gates along Hollybush Lane and Froggy Lane were also noted.
20. A gated access is located on Hollybush Lane, towards the junction with Blacksmith's Lane. In turn this leads to a gravel driveway and two large wooden barn buildings. The buildings were locked and access inside into the buildings were not available. Although I was unable to access the barn buildings, I have no reason to believe that they were not in use for agriculture and that an agricultural use doesn't form part of the overall mixed use of the site.

Equestrian Use

21. I also queried with the parties whether the allegation should include an equestrian use given that I saw there were paddock areas containing horses and ponies to each side of the long entrance driveway leading from Blacksmiths Lane. Their enclosures were delineated by wooden post and rail fencing. Access into those paddocks from the driveway was possible via gate openings. One paddock contained a shelter structure which horses were observed to be using.
22. The appellant has not provided any comment on this matter. Whilst the Council states that 'there are now paddock areas and horses on the Land' it fails to explain whether it considers an equestrian use had occurred at the time of the notice being issued. As such, I find there is ambiguity on this point. The Council goes on to state that the equestrian use is physically separate from the unauthorised use and suggests an amendment to the plan accompanying the notice so that this area would fall outside of the scope of the notice. A revised plan was submitted by the Council (at Appendix 1 to their comments of 17 May 2024) and the Council set out their invitation to the Inspector to replace the plan attached to the enforcement notice. The revised plan includes a substantially smaller area of land which comprises the hardstanding and the Coach House only.
23. The Council explains that when first considered, the planning unit, was derived from the unit of occupation. The Council's Enforcement Report at the final paragraph at section 3 (details of unauthorised development), reads '*in this case, the Council have identified the wider parcel of land as the planning unit given that the site is in one ownership, and there is no functional or physical separation*'. The Council, in response to my queries, goes on to explain that on further scrutiny it is considered that the area of the unauthorised use is denoted and limited to the area of the hardstanding and the use of the building as associated office accommodation. However, where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities.

24. There is a single owner of the land and, whilst there is some physical delineation between parts of the site, I consider it is likely that the land owner exerts control over what occurs and in which parts of the site. In my judgement, based on the evidence and my observations undertaken at the site, it is likely that the land identified in the notice (including 'The Lodge', 'The Garden Cottage' or 'Green Tiles') comprises a single planning unit which is in a mixed use. The Notice does not have to be directed at the whole planning unit, or indeed identify it. Nevertheless, where there is more than one primary use taking place on a planning unit, the Notice should refer to all uses taking place.
25. There is ambiguity regarding the equestrian use of the site and whether this had occurred at the time of the notice being issued and, if it had occurred, whether it was a lawful use. Given the uncertainty, there is a risk that the absence of reference to the primary use of equestrian as an element of the site's mixed use would be a flaw in the notice. The planning considerations of a mixed use of residential, agricultural and commercial storage of vehicles are likely to be different to those of a mixed use of equestrian, residential, agricultural and commercial storage of vehicles. If the allegation were to be expanded to include an equestrian use and the requirements did not require that equestrian use to cease, this would cause injustice to the Council. However, if it were to be included and a requirement included to require it to cease, it would be likely to cause injustice to the appellant as it may have a bearing on the case and the grounds of appeal advanced by the appellant. Accordingly, it may lead to injustice to one, or both of the parties.

Conclusion

26. For the reasons given above, I conclude that the enforcement notice is invalid. 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. Accordingly, the enforcement notice will be quashed.
27. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (d) and (f) of the Act and the application for planning permission deemed to have been made under section 177(5) of Act as amended do not fall to be considered.

E Brownless

INSPECTOR