
Appeal Decision

Site visit made on 30 January 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 17 February 2025

Appeal Ref: APP/E2001/C/24/3342276

Land at Crawshaw Park, Westfield Lane, Fitling, East Riding of Yorkshire HU12 9AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Diane Woodcock against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 6 March 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land to a mixed use for office, storage and associated parking use and the siting of portable buildings in connection with the unauthorised use and the erection of a building and construction of hardstanding and decking to facilitate the use.
 - The requirements of the notice are:
 - 1/ Cease the use of the Land for office, storage and associated parking use and remove all associated materials, products, plant, equipment, vehicles, chattels, equipment and waste from the Land.
 - 2/ Remove from the Land the wooden clad building, labelled as unit 2 on the photos accompanying the notice and marked in turquoise on the aerial photo attached to the notice.
 - 3/ Remove from the Land the wooden clad building, labelled as unit 3 on the photos accompanying the notice and marked in orange on the aerial photo attached to the notice.
 - 4/ Remove from the Land the 'Portacabin' style building, labelled as unit 4 on the photos accompanying the notice and marked in purple on the aerial photo attached to the notice
 - 5/ Remove from the Land the wooden building labelled as unit 5 on the photos accompanying the notice and marked in blue on the aerial photo attached to the notice
 - 6/ Remove from the Land the decking marked in yellow on the aerial photo attached to the notice
 - 7/ Remove from the Land the Fiat minibus used for storage, labelled as a minibus on the photos accompanying the notice and marked in green on the aerial photo attached to the notice.
 - 8/ Remove from the Land the extended hardstanding/gravel marked in pink on the aerial photo attached to the notice, and
 - 9/ Following the completion of step 8 above, prepare and cultivate the area where hardstanding and gravel have been removed ready for grass seeding in accordance with best practice, then reseed with an agricultural grass seed mix in accordance with best practice.
 - The period for compliance with the requirements is:
Steps 1 through to Step 8 inclusive within six months.
Step 9 within twelve months
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed with a correction and variations as set out in the Formal Decision below

Procedural matters.

1. The appellant maintains that a business is not being run from the premises and that the business which did operate from the site relocated to Beverley in May 2023, with all aspects of the business moving with it. The appellant did not appeal on ground (b) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act): namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not *occurred* (emphasis added).
2. In other circumstances, I would have treated the appellants comments as an appeal on ground (b). However, ground (b) is expressed in the past tense ('occurred'). The appellant freely admits that the business was operating from the premises prior to May 2023, such that the mixed use alleged in the notice did occur. Consequently, on the appellant's own evidence an appeal on ground (b) could never have succeeded. I have therefore approached this appeal on the basis that the use alleged in the notice has occurred, but had ceased by the time the enforcement notice was issued in March 2024.
3. As submitted, no appeal was made on appeal (c) as set out in section 174(2) of the 1990 Act: namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. However, on my reading, some aspects of the appellant's evidence clearly amounted to an appeal on ground (c) and I have treated it as though an appeal had been made on that ground. The Council was afforded an opportunity to comment on this additional ground of appeal, and I have taken the comments received into account.
4. The appeal as originally submitted did not include appeals on grounds (a) or ground (d) as set out in section 174(2) of the 1990 Act. These were added subsequently and are considered below.
5. I note that the word 'equipment' appears twice in the requirement at paragraph 5(1) of the notice. I am satisfied that I can correct the notice in that respect without causing injustice.

The appeal on ground (c)

6. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
7. The appellant's case on this ground of appeal is in two parts. Firstly, that the outbuilding is sited under permitted development rights in line with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as the building is in the original curtilage of the property. The enforcement notice refers to a number of wooden or wooden-clad buildings, any one of which might be considered to be an outbuilding. However, I have taken Building A as shown on Drawing No P20 -0502 04A as being the outbuilding to which the appellant refers. Secondly, that the outbuilding could not be used as a separate self-contained planning unit or self-contained accommodation.

Whether the outbuilding is permitted development

8. The provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2, Article 3 of the GPDO. Several points flow from that provision.
9. Firstly, Class E applies only to buildings within the curtilage of the dwellinghouse. This relates to the date on which the outbuilding was substantially completed. It is settled case law that the relevant date on which to determine the extent of the curtilage is the date of the application or, in this case, the date on which the enforcement notice was issued. This will involve considering both the past history of the site, and how it is laid out and used at the time that the enforcement notice was issued.
10. The Council has provided a copy of a plan of Crawshaw Bungalow before the mixed use alleged in the notice took place. On that plan, the residential curtilage of Crawshaw Bungalow was tightly drawn around the dwellinghouse itself. Applying the tests set out in well-established case law relating to curtilage, I conclude that as a matter of fact and degree the outbuilding (Building A) was not within the curtilage of Crawshaw Bungalow at the time the enforcement notice was issued.
11. It follows that the outbuilding was erected (and substantially completed) on land outside of the curtilage of the dwellinghouse, and thus is not permitted by Class E, Part 1, Schedule 2, Article 3 of the GPDO. I am also mindful that the lawful planning use of the land may not have been residential at all, but may have been in agricultural use. This is a further reason why the outbuilding would not have benefitted from any permitted rights under Part 1, Schedule 2, Article 3 of the GPDO, which only relates to development relating to dwellinghouses. Either way, the outbuilding (Building A) does not, on the balance of probability, constitute permitted development under Class E, Part 1, Schedule 2, Article 3 of the GPDO.

The Planning unit

12. As a matter of principle, the appellant is not correct to assert that the outbuilding could not to be used as a separate self-contained planning unit. It could, but that is not the point. The salient point is that, as a matter of fact and degree, the outbuilding is currently within a planning unit the primary use of which is the mixed use alleged in the enforcement notice. If the outbuilding was constructed when that was the case, and I have no evidence to show otherwise, it could not be permitted under Class E, Part 1, Schedule 2, Article 3 of the GPDO, or for that matter under the GPDO at all by virtue of Article 3(5) of the GPDO, given that the use is unauthorised.

The appeal on ground (c): conclusion

13. There is no dispute that the outbuilding (Building A) constitutes development for the purposes of Section 55(1) of the 1990 Act. Section 57 of that Act provides that planning permission is required for the carrying out of development. There is no planning permission in place, deemed or otherwise, for Building A or for any other aspect of the development alleged in the notice. I therefore conclude that, on the balance of probability, the matters stated in the notice (including Building A) do constitute a breach of planning control.

The appeal on ground (d)

14. The appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
15. It is the appellant's own evidence that the business at the premises was still operating as of May 2023, but then relocated. However, I have been provided with no detailed evidence as to when the business on the appeal site commenced or whether it operated continuously from that date for a period of at least ten years. Absent that evidence, I cannot be satisfied on the balance of probability that the mixed use alleged in the notice had been taking place continuously for a period of ten years, such that it had become immune from enforcement action.
16. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

17. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
18. It is important to note that the deemed planning permission that arises out of an appeal on ground (a) can only relate to the matters stated in the notice, in this case specifically the material change of use of land to a mixed use for office, storage and associated parking use and the siting of portable buildings and other development in connection with that use. Consequently, I am not able to consider granting planning permission for the retention of the buildings on the land to which the notice relates for other purposes, including for hobby or other purposes ancillary or incidental to the use of the dwellinghouse known as Crawshaw Bungalow. That does not form part of the matters stated in the notice and is therefore not before me. This would be a matter for the local planning authority in the first instance.
19. The Council has stated just one (albeit extensive) reason for issuing the notice. The Council purports that this raises issues relating to the effect of the development on the character and appearance of the area, and in relation to flooding/drainage. However, whilst these matters may certainly be inferred from reading the policies referred to, they are not stated outright as reasons for issuing the notice. Accordingly, from a plain reading of the reasons for issuing the notice, the sole issue raised by this appeal is whether the appeal site is in a suitable location for the mixed use alleged in the notice.
20. The appeal site is located within a small cluster of dwellings within a rural area. It is in a remote and isolated location, and is only accessible via an extensive network of narrow country lanes. It is a considerable distance from the nearest main road, and even further from any facilities. Furthermore, the appeal site is not readily accessible by public transport.
21. The East Riding Local Plan Strategy Document (ERLP SD) sets out a suite of policies intended to direct new development to suitable locations. That strategy is based on an understanding of the settlement hierarchy of the

district, including the scale of various settlements, the services within them and their relative degree of accessibility. In terms of suitability for a business use, including the mixed use alleged in the notice, the location of the appeal site is the very antithesis of the strategy set out in the ERLP SD.

22. I recognise that the business that was taking place on the appeal site has now ceased. However, notwithstanding the assertion of the appellant to the contrary, I cannot discount the possibility that the use could resume at some point in the future using the existing buildings that are currently on the site. I must therefore determine the appeal that is before me. I conclude that the location of the appeal site is not suitable for that business use. I therefore conclude that the breach of planning control alleged in the notice is contrary to policies S1, S2, S4, S8, EC1 and EC4 of the ERLP SD.

Other considerations

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
24. When the business that was taking place on the appeal site was operating, it would have contributed to the rural economy to at least some extent. Policy EC1 of the ERLP SD supports growth and diversification of the East Riding economy. The National Planning Policy Framework (Framework) also provides support for a prosperous rural economy through sustainable growth and expansion of business in rural areas.
25. However, Policy EC1 of the ERLP SD is clear in stating that, outside of the development limits of villages, employment development will only be supported where it meets certain criteria, none of which apply to the business that was operating on the appeal site. I have found that the development comprised by the breach of planning control is not suitable in this rural location. Consequently, it does not accord with Policy EC1 when read as a whole.
26. In addition, I have no information as to the extent to which the business operated on the appeal site contributed to the growth and diversification of the East Riding economy. For that reason, I attach only limited weight to this as a material consideration weighing in favour of the development. Accordingly, whilst a benefit arising from the development in terms of the development plan and the Framework, that consideration does not outweigh the wider conflict with the development plan identified above.
27. I have considered whether planning permission could be granted for part of the matters stated in the notice, but that would not be appropriate in this case. Consequently, I have therefore not considered it further.

Conclusion on ground (a) and the deemed planning application

28. I have not been advised of any material considerations which, taken individually or cumulatively, are of sufficient weight to indicate that

determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice, either in whole or in part.

The appeal on ground (f)

29. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to cease the use of the Land for office, storage and associated parking use and remove all associated materials and equipment from the Land. The purpose of the notice must therefore be to remedy the breach.
30. It is settled case law that an enforcement notice directed at a material change of use (as in this case) may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, would be permitted development or otherwise immune from enforcement, so that the land is restored to its condition before the change of use took place. However, an enforcement notice cannot require the removal of works that were undertaken for a different and lawful use and which could be utilised in that other lawful use if the unauthorised use ceased. Two points arise from this.
31. Firstly, whilst the appellant seeks to retain the outbuildings for purposes ancillary or incidental to the use of a dwellinghouse as such, it is not disputed that these outbuilding were used in connection with the business that operated from the site until May 2023. This places the buildings squarely in the bracket of being integral to and solely for the purpose of facilitating the unauthorised use.
32. Secondly, I have no evidence before me that a residential use was the lawful planning use of the land at the time the buildings were substantially completed. The Council indicate that the appeal site historically formed part of Crawshaw Farm, which lies to the south-east, and comprised a large area of concrete hardstanding which was associated with the agricultural activities there. Furthermore, the Council indicate in the reasons for issuing the notice that agriculture is the lawful use of the land. I note also that the appellant refers to the land being used as a pig breeding unit at the time she purchased it, which supports the Council's view.
33. The significance of this is that, if correct, this would make the lawful planning use of the appeal site an agricultural use. The appellant has not suggested that the buildings could be re-purposed for an agricultural use, and therefore utilised for that other lawful use now that the unauthorised use ceased.
34. I acknowledge that the reasons for issuing the enforcement notice do not specifically identify an issue with the buildings on the site in terms of their scale or appearance. However, the case law in this area is not concerned with the appearance of the building. It is entirely focused on the use of that building(s) once the unauthorised use ceases. I am therefore satisfied that in

accordance with well-established principles in case law the enforcement notice can require the removal of the buildings/development identified in the notice.

35. The requirement at paragraph 5(7) of the notice is to remove from the Land the Fiat minibus used for storage. The appellant maintains that this vehicle was not used as storage and was not associated with the business in any way, but is privately owned by a family member and is waiting to be converted to into a camper van. It seems to me that with the cessation of the business operating from the site, and with the notice preventing the resumption of that business from the site, this minibus could no longer serve a useful storage function in isolation. I am therefore prepared to give the appellant the benefit of the doubt in this respect, and I shall delete this requirement from the notice in its entirety.
36. The Council indicate that the land was covered by concrete hardstanding when used as part of Crawshaw Farm. In that context, I note that the requirement at paragraph 5(8) of the notice is to remove from the Land the *extended* hardstanding/gravel (emphasis added). The requirement at paragraph 9 of the notice is then, following the completion of step 8, to prepare and cultivate the area where hardstanding and gravel have been removed ready for grass seeding in accordance with best practice, then reseed with an agricultural grass seed mix in accordance with best practice.
37. The requirement at paragraph 5(9) of the notice can only sensibly be read in the context of the requirement at paragraph 5(8) to relate solely to the area of hardstanding/gravel as extended. I am therefore satisfied that the requirements of the notice are not excessive in respect of the area to which it relates.
38. However, I have no evidence before me that this land was previously laid to grass. The requirement in paragraph 5(9) of the notice is to prepare and cultivate the area where hardstanding and gravel have been removed ready for grass seeding can therefore be considered to be excessive. I shall therefore replace this requirement with the requirement that the land is restored to its condition before the breach took place. This would be entirely consistent with Section 173(4)(a) of the 1990 Act.
39. Subject to these variations, I am satisfied that the steps required are necessary to achieve the purpose of the notice. Accordingly, I consider that the remaining requirements of the notice are not excessive and are a proportionate response to the breach of planning control that has occurred.

Conclusion

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

Formal Decision

41. It is directed that the enforcement notice is corrected by:
- in paragraph 5(1) of the notice, deleting the word 'equipment' after the word 'chattels'

42. It is directed that the enforcement notice is varied by:

- deleting paragraph 5(7) of the notice in its entirety.
- in paragraph 5(9) of the notice, deleting the words 'prepare and cultivate the area where hardstanding and gravel have been removed ready for grass seeding in accordance with best practice, then reseed with an agricultural grass seed mix in accordance with best practice', and substituting there the words 'restore the Land to its condition before the breach of planning control alleged in the notice took place'.

43. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR