



Appeal Decision

Site visit made on 1 April 2025

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2025

Appeal Ref: APP/Z4718/C/24/3345073

Land south of the railway line, Scar Lane, Milnsbridge, Huddersfield, HD3 4PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Benjamin Good against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 16 April 2024.
 - The breach of planning control as alleged in the notice is: without the benefit of planning permission, the material change of use to wood processing yard.
 - The requirements of the notice are to:
 - (a) Cease the use of the site as a wood processing yard.
 - (b) Remove all of the paraphernalia associated with the wood processing use, including but not limited to, machinery, logs/wood, lorry backs, containers, heavy goods vehicles.
 - (c) Return the land back to its condition prior to the development taking place
 - The periods for compliance with the requirements (a) and (b) is 60 days and the period for compliance with requirement (c) is 120 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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Decision

1. The enforcement notice is quashed.

The Notice

2. The breach of planning control alleged in the notice relates to the material change of use of the site to a wood processing yard, which both parties agree is within use class B2 (General Industry) of the Use Classes Order 1987 (as amended). The notice requires this use to cease, all associated paraphernalia to be removed and for the land to be returned to its condition prior to the development taking place.
3. The appellant acknowledges that wood processing is taking place on the site, but contend that this use is confined to the north eastern part of the site. The Council has not disputed this. However, the red line on the plan attached to the notice does not identify the precise area on which the wood processing use is taking place. Instead, it encompasses a larger area of land which the evidence before me indicates is a single planning unit within the same occupation with no obvious physical or functional separation within it.
4. During my site visit it was apparent that part of the site is not used for wood processing. On the western part of the site in particular, various items are stored including different types of vehicle, machinery and materials, that I would not associate with wood processing operations. The evidence indicates that the site was formerly used as a railway goods yard and coal depot, and later as a stone

yard. The appellant says that it is now used predominantly as a base for their main business, which is tree management and vegetation control on the railway network.

5. It therefore appears that there is a mixed use on this site. The concept of a mixed use is two or more primary uses existing within the same planning unit or unit of occupation. One is not incidental to the other, although there may be incidental uses associated with each primary use.
6. Consequently, the allegation in the notice is incorrect. It should have referred to all the components of the mixed use even if only one is required to cease. This is because, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities. In any event, it is clear that there is not a single primary use for wood processing on the whole of the appeal site.
7. It is my duty to “try get the notice in order” if I can, and I have wide powers of correction under section 176, but only where no injustice would be caused to either party. Neither party has provided an adequate description of the mixed use within the red line area which might form the basis for a revised allegation. Moreover, if I were to expand the allegation and the requirements of the notice, then it would widen the scope of the notice which could cause injustice to the appellant. I have considered whether the notice could be varied by deleting the plan and substituting it with a plan to identify the land in wood processing use only. However, it is not clear where the precise boundaries of that use are, and that would not correctly identify the planning unit as a whole.
8. The uncertainty surrounding the alleged breach means that the steps required to be taken to remedy it are similarly unclear and any additional requirements would make the notice more onerous. Correcting the allegation in such a case could also have implications for the parties’ cases on grounds (a) and (f). The notice is therefore invalid.

Conclusion

9. I conclude that the enforcement notice does not specify correctly the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct the error since injustice would be caused. Therefore, the enforcement notice is invalid and will be quashed.
10. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (f) of the 1990 Act and the application for planning permission deemed to have made under section 177(5) of the 1990 Act do not fall to be considered.

M Ollerenshaw

INSPECTOR