



## Appeal Decision

Site visit made on 23 April 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

### Appeal Ref: APP/D2320/C/23/3334083

#### Breworth Fold Farm, Marsh Lane, Brindle, CHORLEY, PR6 8NZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Kate Kaye against an enforcement notice issued by Chorley Borough Council.
- The notice was issued on 30 October 2023.
- The breach of planning control as alleged in the notice is i) Unauthorised material change of use of an agricultural building ("the Building") to a mixed-use building comprising agriculture, storage and distribution purposes in connection with a tree surgery and woodland management company.  
ii) Unauthorised material change of use of the Building to a mixed-use building comprising agriculture and general industrial purposes in connection with the processing of wood in connection with a tree surgery and woodland management company.
- The requirements of the notice are to: i) Permanently cease the use of the Building for storage and distribution purposes in connection with a tree surgery and woodland management company.  
ii) Permanently cease the use of the Building for general industrial purposes including but not limited to the cutting, splitting and processing of timber/wood. iii) Permanently remove from the Building all motor vehicles, equipment wood and materials stored or used for distribution purposes in connection with a tree surgery and woodland management company and remove from the Land. iv) Permanently remove from the Building all mechanical equipment used for or in connection with the processing of timber/wood in connection with a tree surgery and woodland management company and remove from the Land.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended).

### Decision

1. The enforcement notice is quashed.

### The Notice

2. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act) to correct any defect, error or misdescription, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellant or the Council. If the Notice cannot be corrected, I must quash the Notice.
3. In consideration of an alleged material change of use of land, Bridge J in *Burdle*<sup>1</sup> highlighted 3 broad categories of distinction in considering the relevant planning unit. These are:
  - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;

<sup>1</sup> *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

- 2) a single PU 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
- 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
4. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
5. The Land identified in the Notice consists of the agricultural holding and the associated farmhouse. That area covered by the Notice is much wider than the Building in which the various uses are alleged to have taken place and said to have resulted in a material change of use. However, from the evidence at the time of my site visit and that provided by the appellant, the Council and a third-party, it seems probable that some of the uses referred to in the Notice extend beyond the Building.
6. The use of the yard area for parking and vehicle cleaning in association with the arboricultural/forestry business; the agricultural use associated with the workshop; domestic parking; or, the housing of livestock, for example, lead me to conclude that the Building in isolation cannot be considered physically and functionally separate to enable it to be identified as a distinct planning unit.
7. Accordingly, any allegation of a mixed use of the planning unit - consisting of the holding and the associated farmhouse, should include reference to *all* of the uses taking place there. Following *East Sussex*<sup>2</sup>, it is not open to the Council to decouple uses taking place within a single planning unit.
8. The evidence indicates that other uses take place on the Land. An equine use is said to occur in buildings and on land to the south of the Building identified in the Notice. The Notice omits the residential use of the farmhouse, or any uses incidental or ancillary to it. A third-party claim includes other alleged use/s (these are not addressed by the main parties). Furthermore, on the limited evidence, it is not possible to conclude that other distinct planning units exist on the Land such that the Notice could be corrected by their exclusion.
9. Correction of the Notice to include reference to all of the uses taking place on the holding would lead to injustice to either one or both of the parties. It may have affected the grounds of appeal submitted and prevented legitimate arguments for the appellant; it could lead to unintended underenforcement through operation of s173(11) of the Act; and it would change the context in which the alleged material change of use must be considered, for instance.
10. As the allegation in the Notice does not reflect the entirety of the mixed-use taking place on the identified planning unit, my duty to have regard to potential injustice leads me to the conclusion that the Notice should be quashed.

## 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 to

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<sup>2</sup> *R (oao East Sussex CC) v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin)

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.

12. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of s171B(4) of the Act.
13. In these circumstances, the appeals on grounds (b), (c) and (d) do not fall to be considered.

*R Hitchcock*

INSPECTOR