



Appeal Decision

Site visit made on 24 August 2021

by Thomas Shields MA DipURP MRTPI

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

Decision date: 08 February 2022

Appeal Ref: APP/L3245/C/21/3273259

Land to the north of Claverley Cricket Ground, Claverley, Wolverhampton, Shropshire, WV5 7AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
- The appeal is made by Mrs Sonja Oakley against an enforcement notice issued by the Shropshire Council.
- The enforcement notice was issued on 16 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses.
- The requirements of the notice are:
 - (i) Cease the use of the land (as edged red on the plan) for a mixed use of agriculture and for storage associated with non-agricultural commercial use.
 - (ii) Remove from the land any materials associated with compliance of (i) and return the land to its previous state.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) (c), (f) and (g) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal site

1. The appeal site is identified by the red outline marked on the plan attached to the enforcement notice. It forms part of the appellant's wider land holding, indicated by a blue outline marked on the notice plan, and is located within the open countryside and the Green Belt to the southwest of the village of Claverley. Vehicular access is via a tall gated access from the adjoining lane.

Preliminary matters

2. The Council served two enforcement notices on 16 March 2021. The first notice was in respect of operational development on the site comprising the erection of buildings, a wall, gates and other structures, creation of hardstanding and the siting of a shipping container. All of these are required to be removed and the land restored to its former condition within 6 months (19 October 2021). No appeal was lodged against the notice and the notice is in effect.
3. The second notice is the one subject of this appeal and relates to an alleged material change of use of the land to a mixed use of agriculture and storage as summarised in the banner heading above.

4. The appellant suggests that the use of the land, and the operational development that has taken place (subject of the first notice), cannot be considered as separate matters; that they are part and parcel of the same activity.
5. However, the notice subject of this appeal alleges only a material change of use, being a mixed use of agriculture and storage of vehicles and materials in association with the carrying on of other businesses. In this regard it should be noted that an appeal on ground (a) of s174(2) of the Act is that planning permission ought to be granted for any breach of planning control which may be constituted by "the matters stated in the notice". Consequently, in this case the appeal on ground (a)/deemed application for planning permission can only seek planning permission for the mixed use of the land as alleged (noting that use of land solely for agriculture would not require planning permission).
6. The operational development subject of the first notice, taken as a whole, is substantial development and requires planning permission in its own right. It is not open to me to grant planning permission for it in this appeal.
7. The Inspectorate notified the Council of the ground (b) appeal being made on 28 June 2021. The appellant's subsequent statement and evidence, including ground (b), was copied to them on 10 August 2021. However, the Council have not directly addressed the ground (b) appeal in their SOC. Nonetheless, I have taken account of their evidence as a whole in reaching my decision.

Validity of the enforcement notice

8. It is argued for the appellant that the alleged breach is unclear, rendering the notice a nullity or invalid and incapable of correction. This stems from an assertion that the breach fails to identify the specific non-agricultural uses alleged to have taken place, and the particular structures or buildings alleged to be in such unauthorised use. I disagree with this assertion.
9. Firstly; the breach goes beyond simply stating "non-agricultural" use. It clearly alleges a mixed use for agriculture and for (non-agricultural) storage of vehicles and materials. "Storage" is an industrial type of use in its own right and is distinct from, for example, the storage of equipment, vehicles and materials as part of or ancillary to a purely agricultural use of land. While the alleged breach might have been expressed differently, it nonetheless adequately specifies the breach of planning control alleged to have taken place.
10. Secondly; while I agree the notice does not identify particular buildings or structures in use for non-agricultural storage, that is entirely consistent with the allegation. It clearly identifies the whole of the appeal site (outlined in red on the notice plan) as being used for a single *mixed* agricultural and storage use.
11. To conclude, the allegation in the notice is clearly expressed and capable of being understood on a plain reading. Hence, the notice is neither a nullity nor invalid.

The appeal on ground (b)

12. An appeal on ground (b) is a claim that the matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact. Note that "occurred" is past tense. Thus, for this ground of appeal to

succeed it must be shown that prior to the issue of the notice on 16 March 2021 the alleged mixed use of the land for agriculture and storage had not occurred.

13. In this legal ground of appeal the burden of proof rests with the appellant, and the test of the evidence is on the balance of probabilities (whether something is more likely than not). Additionally, the Courts¹ have established that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence is sufficiently precise and unambiguous.

Summary of the appellant's evidence

14. The appellant's evidence is set out in the submitted statement of case (SOC) together with appendices, and final comments.
15. Appendix EP4 is the appellant's Statutory Declaration (SD) dated 4 August 2021. It relates to use of the wider site (shown in blue on the notice plan) as well as the appeal site. In summary it states the following: that from July 2017 when she acquired the land it has been used only for the keeping of chickens, goats and bees. She works full time on the land with part-time assistance from her husband and two sons. At the date of the SD the livestock then present was a herd of pedigree goats and rare breed poultry. An orchard has been established, bee hives have been installed for future production of honey and rare breed pigs are to be added. The intention to establish a farm enterprise focussing on high quality specialist produce. The livestock will provide milk and meat for sale and a breeding programme will be established. She also owns other parcels of land nearby used for bringing male goats (wethers) up to weight, and for production of haylage.
16. With regard to the buildings on site she states they are used for storage of grain, hay, equipment and machinery, also for providing stalls for birthing/breeding, shelter and facilities for milking and herd maintenance. The storage container on site is used for secure storage for produce from the holding and materials needed, such as jars and packaging, and freezers and refrigerated units.
17. She goes on to state that the family own and operate a separate contracting and property maintenance business and this is completely separate from the farming business and does not and has never operated from the appeal site. All the machinery at the appeal site is utilised for agricultural purposes. With regard to specific items she states that the 'loadall' machine is used for general work and transport purposes as the mini tractor at the site cannot be used on the road, thereby needing to be transported by trailer between landholdings.
18. She concludes (I summarise) by stating that everything on site relates to the use of the land for agriculture, including the yard area and drainage works that were undertaken.
19. Appendix EP5 is a SD from Gavin Oakley also dated 4 August 2021. In brief, it corroborates all the evidence in the appellant's SD in respect of the appeal site being used only for agriculture. He adds that all equipment and machinery

¹ *Gabbitas v SSE & Newham BC* [1985] JPL 630

- associated with the separate maintenance business are stored at separate premises.
20. Consistent with the two SDs referred to previously the appellant's SOC and submitted final comments also sets out that all vehicles, machinery, and equipment stored on site are associated solely with the agricultural use of the land, and that the separate property maintenance company operates independently and at a separate location from the appeal site.
 21. Reference is made in the SOC to a business plan for the agricultural enterprise. However, the references to future ambition and use of the land are not relevant to this ground of appeal which relates solely to whether the matters alleged in the notice occurred prior to the issue of the notice.
 22. Appendices EP8, EP9 and EP10 are unsigned and undated correspondence from three individuals. Other than these people acknowledging their acquaintance with the appellant and her husband, they do not provide any evidence of the land use at the appeal site prior to the issue of the notice. I attach no weight to them.
 23. Appendix EP11 is a copy of a planning contravention notice (PCN) and completed questionnaire in relation to the wider site, served on the appellant and her husband by the Council in June 2020. Question 4(i) asks about current agricultural activity on the land. The response states: "The site is being prepared so that it is suitable for keeping goats as part of a new business venture. Once planning matters are resolved S&G Oakley Farm intend to acquire 10 goats, with a view of increasing numbers over the next few years. The goats will be kept for small scale milk and meat production. The partners have a CPH number (35/196/0344) and have registered with Animal Health and obtained a unique herd number".
 24. The response to question 4(j) in respect of proposed future agricultural activities indicates the intention to keep bees and hens. It goes on in response to question 4(k) to describe how the goats would be kept during the seasons, and the intention (question 4(l)) to increase numbers in future years. In answer to other questions items of machinery and equipment are listed and said to be used for land management, livestock care and transportation. I also note that it confirms a building was erected in September 2018 and "works to site" began in October 2019.
 25. Appendix EP14 is a signed letter from a veterinary practice confirming that they have attended goats at the appeal site since November 2020.

Analysis

26. While there may have been little if any 'active' agricultural use of the land immediately following the appellant's acquisition of it in 2017, there is no dispute by any party that the lawful use of the land is for agriculture, both prior to and since its acquisition by the appellant. The question to be determined for this ground of appeal is whether a new storage use was added, thereby resulting in a mixed use of agriculture and storage.
27. The evidence in the two SDs, sworn on Oath to be truthful, are unequivocal in stating that no non-agricultural storage use of materials and vehicles has taken place. It seems to me that a person would not lightly submit false evidence as they will be aware of the serious consequences of doing so, not least being the

- penalties that could result from any subsequent prosecution and conviction for an offence of perjury. Moreover, the SDs are not directly contradicted by the Council or any other party. On their face therefore I attach significant weight to the SDs in reaching my decision.
28. Providing false information in response to a PCN can also result in serious consequences (as explained within the PCN). Accordingly, I also attach due weight to the completed PCN questionnaire.
 29. Appendix 10 to the Council's SOC includes five photographs received by them from third parties. However, while the date on which the Council received them is indicated, the images themselves are undated by the person(s) who took them. I cannot therefore be sure when the images were taken and 3 of the marked dates are after the enforcement notice was issued. They do not provide convincing evidence of the land being used for non-agricultural related storage of vehicles and materials prior to the notice being issued. The 2 images that are marked as being received before the notice was issued clearly show the substantial operational development in progress at the time, but they do not indicate to me any sustained storage use of the land as alleged.
 30. Appendix 1 to the Council's SOC is the officer report (OR) recommending enforcement action. It refers (para. 2.1) to complaints received regarding the appeal site, including in respect of the alleged unauthorised use subject of this appeal. However, copies of those complaints or Council records of any investigation relating to them have not been provided.
 31. The OR goes on to summarise "general observations". These include use for "storage of materials and vehicles in connection with other businesses". However, no direct evidence of observing or otherwise confirming such use is provided. The Council point to a contradiction on the Komo Forestry website which states that their operations are close to Bridgnorth, their address is in Wolverhampton, but the location view on google maps via their website is the appeal site. This single factor is curious and is not expanded upon by either of the main parties. However, by itself I cannot rely on an unexplained link to google maps as weighty evidence that the alleged use occurred as a matter of fact.
 32. The OR also refers to no livestock being observed. However, the lack of livestock does not mean the land was not in agricultural use, as it always had historically been so, whether actively farmed or not. Moreover, the letter from the veterinary practice referred to earlier (EP14) refers to attending animals on the site since November 2020 and the notice issued in 2021 alleges a mixed use including agriculture.
 33. The OR (para. 2.2) lists 4 comments from third parties. They all refer to the operational development on the site but only the fourth one refers loosely to non-agricultural use. It states that a commercial business "appears to have been operating from this site".. and "we believe that an associated business is using the site to store heavy plant as this has been seen entering and leaving regularly". However, the observation is not inconsistent with the acknowledge groundwork remodelling and other building operations undertaken by the appellants over a lengthy period of time.
 34. An officer visit to the site in connection with one of the planning applications was made on 9 September 2020. Any direct records of the observations made

at the time of the officer's visit are not before me. The OR (page 6) refers to the visit. It states that the officer "found vehicles that were not for agricultural use and storage of other materials" including "low loading vehicles stacked with wood and items of household furniture". The presence of household furniture seems at odds with the claimed agricultural use of the site. If the officer had questioned the appellant during the visit regarding the observation the response is unfortunately not before me. While I attach some limited weight to this part of the Council's evidence, a single observation on a single day does not convince me that there was a more substantive or prolonged use of the site for mixed agriculture and storage.

35. The Council's Appendices 2 and 4 are the ORs relating to planning applications for elements of operational development at the site. While they in small part refer to allegations of potential unauthorised use these documents provide no actual evidence of such use.
36. In response to this appeal being made a number of third party comments were received, including from the Parish Council, some with photographs of the site. However, taken together they almost entirely relate to the remodelling of the land, building and other operational development on the appeal site over the period of time before the notice was issued². In balancing all the evidence they do not add any significant weight either way with regard to the alleged material change of use of the site.
37. During my own visit to the appeal site I observed the items and vehicles then present, including within buildings. However, it should be noted that my visit and observations were after the date the notice was issued. The appellant's case relies on no mixed use of agriculture and storage having occurred before that date. Nonetheless, I did not see any use of the site, or any items or vehicles which, either by themselves or cumulatively, conflicted with the appellant's evidence relating to the use of the site.

Conclusion on ground (b)

38. As set out previously I must determine the appeal having regard to the evidence before me, tested on the balance of probabilities.
39. I attach significant weight to the Statutory Declarations from the appellant and her husband and to the completed PCN questionnaire for the reasons I have set out earlier. It is precise and unambiguous. Against that, there is very little direct evidence which clearly contradicts the appellant's case such that it would make it less than probable. Additionally, the reported observations from third parties in respect of site activity appear to relate to the operational development taking place over a prolonged period of time, rather than the alleged material change of use.
40. Having regard to all of the evidence before me I therefore find, on the balance of probabilities, that the use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses, has not occurred as a matter of fact.

² All of which is required by the first enforcement notice to be removed and the land restored to its former condition.

41. For all the reasons given above, I conclude that the appeal should succeed on ground (b) and the enforcement notice will be quashed.
42. In these circumstances, the appeal on grounds (a), (c), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

43. The appeal is allowed and the enforcement notice is quashed.

Thomas Shields

INSPECTOR