The Planning Inspectorate

Appeal Decision

Site visit made on 12 March 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/U2370/C/19/3236326
Off Shard Lane, Hambleton FY6 9BX

- 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 Mr Tony Darwen against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice was issued on 24 July 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land from agriculture to the mixed use for agriculture and for the siting of a container for storage purposes.
- The requirements of the notice are: 1. Cease the use of the land for the siting of a container for storage purposes; and 2. Remove the container and its contents from the land in their entirety.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

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

The appeal on ground (e)

2. The appeal on ground (e) is that copies of the enforcement notice were not served as required by s172 of the Act. S172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants.

3. Where the notice is required or authorised to be served on any person as an occupier of the premises in question, s329 of the Act makes provision for a notice to be delivered to some person on the premises in question, or to be affixed conspicuously to some object on those premises.

4. The appellant contends, and the Council agree, that the enforcement notice was sent with an incorrect address. Unfortunately, as a result, there was a delay in the notice reaching him at his home address. Furthermore, he states that the paper documents delivered to the appeal site were simply left to get wet in a plastic bag. However, despite any subsequent damage to the documents, the appellant does not dispute that the notice was served on the land pursuant to s329.

5. Nevertheless, even if the notice was not correctly served, s176(5) provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced. In this case, the appellant has been able to submit an appeal against the enforcement notice and make written representations in support of his case through these appeal proceedings. Even if he has been unable to take on a planning consultant, he has been able to participate in the appeal process.

6. It cannot, therefore, be said that he has suffered any prejudice as a result of any failure to comply with the rules concerning service. There is no suggestion that any other person may have been prejudiced. I conclude, therefore, that in the circumstances of this case, any failure in terms of service of the enforcement notice may be disregarded.

The appeal on grounds (b) and (c)

7. The appeal on ground (b) is that the breach of planning control has not occurred as a matter of fact. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control.

8. The appellant bought the appeal site in 1993. He used it for the storage of a tractor, a trailer and agricultural implements in connection with the approximately 20 acres of agricultural land in his ownership. In 1999, he developed the Hambleton Fisheries business. The business was sold in 2018, but the appellant retained land including the appeal site.

9. Turning first to ground (b), the appellant argues that, because it is on wheels, the dark green container is mobile and can be towed around. He contends it is thus parked and not sited, as the Council allege.

10. Section 55(1) of the 1990 Act says that 'development' includes the carrying out of building, engineering, or other operations. Such operational development comprises activities which result in some physical alteration to the land with some degree of permanence. With regard to whether a potentially moveable structure is a building, it is well established that there are three primary factors of relevance – size, permanence and physical attachment. No one factor is decisive.

11. In this case, the container is substantial, and is large enough that it could be entered into in the manner that one would a building. It is undoubtedly of some weight, even when empty. Although it has wheels at each corner, these are very small, and so it is unlikely that the container could be towed around without some difficulty, particularly over soft grass or uneven ground. Therefore, although the appellant describes it as mobile, these circumstances indicate a significant degree of permanence.

12. Nevertheless, some ancillary uses may be allowed where they support the lawful primary use of a planning unit. The appellant strongly disputes that the container is used for the storage of his personal items. Instead, he says he uses it to store items for the maintenance of both his agricultural land and the adjacent fishery. It is his case that the fishery is not functionally separate from the appeal site as he has an agreement with the fishery owner that he will assist with the maintenance of the fishery using the items he stores in the container.

13. However, the courts have held that planning units should be determined by identifying the unit of occupation and whether there is physical and/or

functional separation of primary uses as a matter of fact and degree. In this case, there is no dispute that the lawful use of the appeal site is agricultural. The fishery now occupies land that is physically distinct from the appeal site, in separate ownership, and in use for a different and unrelated purpose. The existence of the agreement between the appellant and the fishery owner is insufficient to alter the fact that the two pieces of land are different planning units.

14. The container has been placed on the land, and it is the appellant's evidence that its use is not solely incidental to the lawful agricultural use of the land, and so the appeal fails on ground (b).

15. However, turning to ground (c), it is necessary to consider whether the storage for both agriculture and the fishery amounts to a material change of use. The concept of material change of use is not defined in statute or statutory instrument; it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.

16. The Council contend that there does not appear to any agricultural undertaking on the land that is subject to the enforcement notice, and that the level of this use on the remaining agricultural land is minimal. However, they produce little substantive evidence to support these assertions, and stop short of arguing that the primary use has ceased altogether. That being the case, the presence of the container for storage ancillary to the lawful agricultural use does not need planning permission.

17. Although few details are available, it seems to me that the use of stored agricultural implements to carry out maintenance at the fishery would not greatly change the character of activities on the appeal site. The implements would presumably be carried off-site and returned, but this would be similar to their being carried to different part of the agricultural holding, used and returned. There is little to suggest, for example, that the use of the appeal site has been intensified to any significant degree, or substantially changed in any other way.

18. I am therefore satisfied that, in this particular case, any change of use of the appeal site is on such a small scale that it may be regarded as de minimis. As a result, no development has taken place that would constitute a breach of planning control. The appeal on ground (c) this succeeds.

Conclusion

19. Because of my conclusion above, there is no need for me to go on to consider the appeal on ground (d).

20. For the reasons given, the appeal is allowed and the enforcement notice is quashed.

Elaine Gray

INSPECTOR