The Planning Inspectorate

Appeal Decisions

Site visit made on 22 July 2020

by Simon Hand MA

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

Decision date: 03 August 2020

Appeal A: APP/R5510/C/19/3237314
Land on the north-east side of Trout Lane, Yiewsley, West Drayton, UB7 7RT

- 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 Richard Tillyer against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/015731, was issued on 19 August 2019.
- The breach of planning control as alleged in the notice is without planning permission the use of land for mixed uses including car sales, car storage, siting of storage containers and the storage of building materials on Land at the North East side of Trout Lane, Yiewsley, West Drayton, UB7 7RT ("the breach").
- The requirements of the notice are (i) cease the use of the land for car sales; (ii) cease the use of the land for car storage; (iii) cease the use of the portable building that is used in connection with the use of the land for car sales and car storage; (iv) cease the use of the land for the siting of storage containers; (v) cease the use of the land for the storage of building materials; (vi) remove from the land all motor vehicles associated with the unauthorised mixed use of the land for car sales, car storage and the storage of building materials; (vii) remove from the land all storage containers, the portable building, the timber framed structure with polycarbonate sheeting, advertisements, lighting columns, CCTV columns, scalping (used to create hardstanding) and all other materials, equipment, machinery, tools and paraphernalia that facilitates the unauthorised mixed use of the land; (viii) remove from the land all fixtures and fittings, waste and building material together with all plant, equipment and machinery used in compliance with requirements (i) and (vii) above as appropriate.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/R5510/X/19/3236507
Land on the north-east side of Trout Lane, Yiewsley, West Drayton, UB7 7RT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to issue a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Richard Tillyer against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 46642/APP/2019/2169 was dated 27 June 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use in excess of ten years for storage/sales/purchase of building materials and plant equipment, repair, fabrication, welding, construction, architectural salvage and office facilities.

Decisions

Appeal A - 3237314

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B - 3236507

2. The appeal is dismissed.

Preliminary Matters

3. The appellant states that he has ceased the use of the land for car sales and removed all vehicles, signage and advertising. He therefore withdraws the ground (a) appeal, which was for the car sales element only. Appeal A is thus proceeding on ground (d) only in respect of the siting of storage containers, building materials and associated fixtures and fittings.

Reasons

4. The two appeals overlap as the LDC is for a larger area of land that includes the enforcement site. The land also has a complex history which first needs to be disentangled.

5. The LDC covers three separate landholdings that together form a clearly defined area with Trout Road to the west and south, Fray's River to the east and open countryside to the north. The blue land is the bottom (southernmost) part of the site which is currently a compound used for storage of building materials with some shipping containers. The yellow land is a wide strip that runs from the blue land northwards alongside Fray's River and contains a dwelling, Meadow Cottage, and a pair of light industrial sheds facing each other which contain units 1-7, as well as some portacabins used as offices and toilets. The green land is the remainder and largest portion of the site, which was being used for storage purposes, utilising shipping containers rented out by various persons or businesses. The southern part of the green land where it joins the blue and yellow is also used for the storage of building materials and there is a temporary ambulance decontamination unit at the northern end.

6. The enforcement notice site is essentially the green land, but also includes a small area of the blue land where a crane and random building materials are stored. The main access to the blue and green land is across this strip where the enforcement notice land overlaps the blue land, but there is a further access to the green land from Trout Road at its northern end and several gates along Trout Road that could also provide access to the green land. The yellow land is accessed from a separate track taken from Trout Road that runs along the eastern edge of the site by Frays River, but there is also internal access from the main access mentioned above to the yellow land.

7. In simplest terms it seemed to me the yellow land was used for the light industrial units, the dwelling, some storage and offices from which the whole area of land is run. Hence the need for all three parts of the LDC land to be interconnected. The blue land is basically just building materials storage which overflows onto the green land, the rest of which is currently given over to containers and the decontamination unit.

8. This has not always been the case however, as the different coloured sections would seem to have different histories. The aerial photographs show a pretty consistent story. Back in the 1999 Council photographs show the blue and yellow land looked not dissimilar to now, but the green land was largely flat, possibly gravelled hardstanding and empty. In 2004 it was little different and, in neither photograph, does it seem to be in use. In 2006 the blue and yellow land is in still in use and some parking is taking place on the green land as well as a couple of areas that are clearly delineated and being used as compounds. The appellant's aerial photographs take over from here and in September 2006 there is quite a lot of parking on the green land, but a clear large rectangle in the top corner that is fenced off and not used. In 2008 it is pretty much full of car parking except for the top corner.

9. The LDC application is dated June 2019 so the 10 year period begins to run from June 2009. The next aerial photograph is from June 2010 and it shows very much the same as in 2008, except there also seems to be some general storage of materials squeezed into the green land. By 2013 the vacant land in the top corner has been incorporated into the green land, the parking is less dense in April when the photograph is taken, but otherwise it is a very similar picture. In March 2014 the whole area is densely used, as it is in 2016 and 2017. The shipping containers on the green land would seem to make their first major appearance in 2016 and they cover about half the green land in 2017, the rest being car parking. By 2018 the ground level photographs show the car parking has ceased and most of the green land is being used for containers and materials storage.

10. In September 2015 an enforcement notice was issued alleging off-airport car parking, presumably on the green land, and this must be the large amount of parking shown in the aerial photographs from 2008 onwards. This notice was not contested except on ground (g). The appeal decision was issued in 2016 and at some point was complied with as in July 2017 another notice was issued alleging car sales and storage and was appealed. That appeal decision was issued in December 2018 and the notice was quashed. This was because the enforcement notice site covered not only the area of car sales but also the adjacent area of shipping containers. As far as I am aware this is the same site as in the current notice. The Inspector found the enforcement notice site (which is effectively the green land and a bit of the blue as noted above) was a single planning unit in a mixed use for car sales and storage containers. As one element of the mixed use was not in the notice the Inspector considered correcting it. However, the Council argued the containers were not a lawful use and to correct the notice would therefore prejudice both parties. The notice was quashed and the re-issued version is before me today. The mixed use alleged is car sales, containers and building materials, but the car sales use has ceased and the containers now fill the whole of the green land (along with some building materials as noted above).

The Appeal on Ground (d)

11. Having set out what is effectively the background to the appeals the first consideration is the ground (d), that is the use of the enforcement notice site for the storage of shipping containers and building materials for 10 years or more. The first problem with that contention is that much of the site has been used for off-airport car parking which was found to be unlawful and a valid enforcement notice still affects the land. Part of that area was then unlawfully

used for car sales, which forms part of this appeal and the unlawfulness of which is also uncontested. The car parking goes back to at least 2008, that is beyond the 10 year period, so for almost the whole 10 years, much of the site has been used for unlawful activities, which do not form part of the ground (d) appeal.

12. Consequently the most that can be argued is that part of the site has been used for the siting of storage containers and storage of building materials for 10 years. From 2008 onwards it is clear from the photographs that the car parking has waxed and waned over the site, while other uses were carried on around them. Assuming for the moment that the green land forms a single planning unit, and I discuss this further below, it would have been a mixed use as defined in Burdle[1], whereby the mix of uses has fluctuated over time. The mix of uses I am concerned with are the siting of storage containers and general building materials. While parts of the site have clearly been used for storing materials, what those materials are is far from clear. However, accepting they are likely to be building materials, the use of the land for the siting of storage containers does not seem to have begun until after 2013. The few containers visible in 2013 (there might be up to 3) would not seem to be part of a separate use, but merely part of the general storage of materials. The container storage business is not obvious until the 2016-2017 photographs where clearly a new use of the positioning of containers to be used for private storage purposes has been introduced to the mix. There is no separate corroborating evidence for any of this so my assumptions are the best possible based on photographs.

13. Thus the ground (d) appeal cannot succeed because half or more of the site has been used for unlawful activities unrelated to the ground (d) elements, and those elements themselves did not begin until after 2013, well into the 10 year period.

The Lawful Development certificate

14. The application for the lawful development certificate is for the whole site, all the yellow, blue and green land. The claim is that it has been used as a single planning unit for more than 10 years for the mix of uses in the application, that is storage/sales/purchase of building materials and plant equipment, repair, fabrication, welding, construction, architectural salvage and office facilities.

15. The first point to notice is there is no mention of off-airport car parking, car sale and storage and the siting of storage containers. All these uses have taken up most of the green land for most of the period in contention. On that basis alone the LDC cannot be granted. I cannot add these uses into the LDC as several of them are unlawful and a valid enforcement notice exists across some of the green land for the off-airport car parking. For the 10 years prior to June 2019 the site as a whole has been used for a variety of uses, some not included in the application and which have been found to be unlawful. When a new use is added to the mix there is a new material change of use to a different mix of uses and the clock starts again.

16. It is clear from the evidence I have, particularly the rent books, insurance schedules, statements from Rita Mersh and Darren Tillyer and the non-domestic rates, as well as the aerial photographs that the yellow land has

[1] Burdle v SSE [1972] All E.R 240

consistently been used for the operation of the 7 light industrial units and associated outside storage and some portacabins. The blue land, it would seem from the photographs and possibly the evidence from the diaries and invoices etc would seem to have been used for may years for the storage of building materials. Whether any fabrication, welding and construction has gone on it is hard to say.

17. Much of the evidence, such as the diaries, invoices, receipts and business accounts indicate plenty of activity but not where it was taking place or exactly what it was. None of it seems to be for the container storage business that now occupies all of the green land, but much would seem to be for general building materials a use that occupies the blue land and also waxed and waned across the rest of the site as was necessary.

18. I can issue an LDC for a smaller area of the site if I consider there is sufficient evidence to do so, but that would require considerable changes to the description of the uses sought. It would also assume some level of certainty as to what the planning unit was. The appellant claims that now the site is one single unit and this was possibly what I saw on site, there is clearly a degree of interconnectedness between the three different coloured lands. But on the other hand the container business does seem to be a distinct use that is separate from the rest apart from sharing an office on the yellow land.

19. It was clear in 2018 the Inspector thought that the green land was a single planning unit, and it clearly did not seem at that time that it was linked to the blue or yellow. In my view the off-airport car sales was a separate use. It was enforced against as such and so would seem to have been in a separate planning unit at that time. The yellow land would also seem to have been operated separately from the rest of the site in the past. But the key point is that the separation of the blue and yellow land from the green land and each other is not sufficiently certain, from the evidence I have, to enable me to issue separate certificates for those elements.

Conclusions

20. Although there is insufficient certainty in the evidence for me to make any clear decisions on what has been happening, it may help if I conclude as to what I suspect has been happening. The yellow land would seem to have been used for the light industrial units and associated outside storage and the blue land for the storage of building materials for many years. The use of the green land has developed over time, including general outside storage, off-airport car parking, car sales and storage and the operation of a storage business using shipping containers. These uses have grown and shrunk over time and some of the time the green land has been split into different planning units.

21. On this basis the appeals are refused and I shall uphold the notice and refuse to issue the LDC applied for.

Simon Hand

Inspector