



Appeal Decisions

Site visit made on 21 July 2020

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Refs: APP/L1765/C/19/3232990 and 3232991 Peach Cottage, Durley Street, Durley, Southampton SO32 2AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Karl Kurn and Mrs Sharon Jacqueline Kurn against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 10 June 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, material change of use of the Land from equestrian to a mixed use for equestrian, residential garden and the (B8) open storage of two containers, wood, fence panels, bricks, blocks, roof tiles, insulation and other building materials and debris.
 - The requirements of the notice are:
 1. *Cease the use of the land for the open storage of containers, wood, fence panels, bricks, blocks, roof tiles, insulation all other building materials debris and any items not related to equestrian use.*
 2. *Remove from the land the containers in the approximate positions hatched black on the attached plan, the wood, the fence panels, the bricks, the blocks, the roof tiles, the insulation all other building materials and debris.*
 3. *Level the land by spreading topsoil 150 mm deep across the land and seed with grass.*
 - The period for compliance with the requirements is:
Steps 1 and 2: 3 months
Step 3: 9 months
 - The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion in first requirement of the notice the words "*in the approximate positions hatched black on the attached plan*". Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Procedural matter

2. The appellants allege that the plan attached to the enforcement notice is an historic one, which does not accurately portray the actual position. The plan is similar to one submitted in 2008 for the change of use of land behind Peach Cottage from agriculture to equestrian with new stables with tack room and new hay store. The same residential curtilage was indicated on subsequent applications for extensions to Peach Cottage. No planning permission has been

granted to extend the garden into the field at the rear, so whilst the red line of the enforcement notice plan encompasses some land which is now fenced off from the field, its lawful use appears to be that of equestrian use. Accordingly I am satisfied that there is no need to correct the extent of the enforcement notice plan.

3. The requirements of the notice refer to the "containers in the approximate positions hatched black on the attached plan". However, the two containers are not located even approximately in the positions shown. It is unnecessary to define the location of the containers, as the requirements of the notice are clear without specifying their location. I shall therefore correct the notice by deleting the reference to the positions on the plan.

Main Issue

4. The main issue is whether the matters stated in the notice constitute a breach of planning control.

Reasons

5. The onus of proof on an appeal under ground (c) lies with the appellants. The test for such proof is on the balance of probability. The unlawful matters alleged by the Council relate to the storage of containers and, in their broadest sense, building materials.
6. Planning permission was granted in 2009 for the change of use of land behind Peach Cottage from agriculture to equestrian with new stables with tack room and new hay store (Ref: 08/02295/FUL). That permission appears to have been implemented and the stables built. The appellants argue that one of the containers is on equestrian land and has been used for the storage of hay in connection with that approved equestrian use. This assertion is unsupported by evidence.
7. Both of the containers are sited near to Peach Cottage, across the field from where the stables are located. The Council's photographs show that the grey coloured container appeared on Google maps satellite views in 2014, and the second green coloured container arrived some time after 22 April 2015, at which time there was a considerable quantity of what appears to be building materials in the vicinity of the grey container. The green container was shown in situ in the Council's photographs of 24 April 2018, again with significant amounts of building material stored close to it. This container is the one I take to be on equestrian land referred to in the appellants' statement.
8. The Council argues that the siting of materials around the door of the green container precludes obtaining ready access to get hay. However, the photographs show that in the 2018 photograph the doors are unobstructed and in the 2019 photograph the right-hand side of the door of the green container (the one that opens first) is reasonably accessible. However, there is no indication of hay on the ground in front of it. On my visit I saw that the container nearest the stables contained only building equipment, tools and materials.
9. Taking all of the evidence into account, I consider that on the balance of probability, there is little to support the appellants' assertion that the container was used in connection with the lawful equestrian use of the land. I therefore reject that the claim that its siting was lawful.

10. The appellants also claim that the siting of building materials and the siting of the grey container are in connection with building works to be undertaken on Peach Cottage, pursuant to a planning permission for an extension granted in 2019, work on which is said to be due to start imminently. No work had commenced at the time of my site visit, over a year after the issue of the notice, and over two years since the first evidence of building materials being stored on the site.
11. The storage of building materials required for lawful building works on the site of such works is not a breach of planning control. However, the facts of this case show that the site has been used for the storage of building materials for several years, pre-dating the 2019 grant of planning permission for the extension, and that there was little change in the situation between the photographs being taken of the site in April 2018 and eight months later in 2019. It is not claimed by the appellants that the materials were stored with the intention of implementing any of the earlier permissions for extensions. Moreover, on my site visit, I saw that the grey container was being used largely for the storage of tools and equipment, as well as building materials, and to my mind, it looked like a builder's store, rather than a place to keep materials required imminently for an extension.
12. The Council has produced evidence of Mr Karl Kurn being a director of a building company, the registered address of which is at the appeal site. No evidence has been produced by the appellants to show that they have a builder's yard or storage facility elsewhere. The scale and nature of the storage, together with the circumstances to which I have referred, leads me to find, on the balance of probability, that the appeal site has been used for the unlawful storage of the items referred to in the notice, and that there has been a breach of planning control. The appeal on ground (c) fails.

Conclusion

13. For the reasons given above, the appeal is dismissed and, subject to correction, the notice is upheld.

JP Roberts

INSPECTOR