



Appeal Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

Appeal Ref: APP/W1145/C/24/3340351

**Land at Grid Ref 244670 125921, Hamilton Close, Bideford, Devon
EX39 3DS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Helen Sheard against an enforcement notice issued by Torrington District Council.
- The notice was issued on 6 February 2024.
- The breach of planning control as alleged in the notice is: Without planning permission:
 - (i) The change of use of the Land from agricultural to a mixed use of storage (B8) and agricultural shown in the attached plan (Appendix A¹).
- The requirements of the notice are to:
 - (i) Cease the use of the Land for the storage (B8), including the storage of any caravan, container, vehicle, garden waste, building waste, building materials and other items.
 - (ii) Remove all caravans, containers, vehicle, garden waste, building waste, building materials and other stored items. (Shown in Appendix B²)
 - (iii) Remove all resultant debris from the Land.
- The period for compliance with the requirements is: One month from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Application for costs

1. An application for costs was made by Ms Helen Sheard against Torrington District Council. This application is the subject of a separate Decision.

Preliminary matter

2. The appellant's written submissions suggest that storage activities may have been occurring on the Land for many years. If so, it may be that it was too late for the Council to take enforcement action, which is relevant to an appeal on ground (d). In advance of the Hearing, I advised the parties that I would need to consider this, and a full discussion of the relevant issues took place. Accordingly, no injustice would arise if I were to also consider the appeal on ground (d).

¹ Reference to an attached plan and Appendix A here is reference to Appendix A to the enforcement notice.

² Reference to Appendix B here is reference to Appendix B to the enforcement notice.

The enforcement notice

3. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice ("the Notice") in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act") include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
4. The alleged breach of planning control is a change of use. Only a material change of use constitutes development within the meaning of the 1990 Act and this word should be added for clarity. The allegation also includes the words 'shown in the attached plan (Appendix A)', but this appears to duplicate the definition and identification of the land subject to the Notice ("the Land"), which is set out in Section 2 of the Notice. It should be deleted for clarity. At the Hearing, the parties agreed that these minor corrections would not cause injustice.
5. The first requirement, set out at Section 6 of the Notice, is to cease the use of the Land for the storage (B8) of various listed items. The list of items adds nothing to the stated requirement to cease the use. The Council clarified at the Hearing that the purpose of the Notice was to remedy the breach of planning control, and the appellant did not dispute this. In that scenario, it is important that the requirements are consistent with the allegation. The requirement should, therefore, be to cease the use of the Land for the mixed use of storage (B8) and agriculture.
6. The appellant is concerned that this would prevent the lawful use of the Land for agricultural purposes. However, Section 57(4) of the 1990 Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purposes for which it could lawfully be used, if that development had not been carried out. Therefore, correcting the requirements to be consistent with the allegation will cause no injustice to the appellant because the Notice would not prevent any lawful use of the land. Notwithstanding comments that may have been made by the Council's officers at various times in the past, there is no dispute that the lawful use of the majority of the Land would be agricultural.
7. The second requirement of the Notice lists various items to be removed. It then says that these are shown in Appendix B to the Notice, which is a series of photographs. The inclusion of this reference could, inadvertently, limit the items targeted by the Notice to only those shown in the photographs and so it may not fully remedy the breach if other items were stored and not clearly shown.
8. While the list of items in this case, details certain things that must be removed, it is not clear what the 'other stored items' are. Furthermore, as will be seen, the main thrust of the appellant's case on the ground (c) appeal is that items are stored on the land in connection with its lawful use. Without prejudice to my consideration of that ground of appeal, if that is shown to be the case, but not to the extent that the Notice should be quashed, then further confusion could arise as to what needs to be removed.

9. It is sufficient for the Notice to simply require the unauthorised use to cease, and the items stored in connection with that use to be removed. If the appeal fails and the Notice is upheld, the Council could require the removal of all items connected with the unauthorised mixed use. The appellant could rely on the provisions of Section 57(4) to carry out any activities that can be proven to be genuinely incidental to the lawful use of the land. Therefore, no injustice would arise to either party if I were to correct the Notice in this way.
10. At the Hearing there was a discussion about whether land on the opposite side of a stream that crosses the appellants land should be included in the Notice. However, while it is a separate land parcel with an intervening physical feature, it appears to be a continuation of the agricultural land owned by the appellant and, before the alleged breach of planning control, was in the same use. Therefore, there appears to be no compelling reason to correct the plan attached to the Notice to exclude this land parcel and I shall not do so.

Ground (c)

11. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. The onus is on the appellant to prove their case to a standard of the balance of probabilities. The main issue is whether items are stored on the land in connection with its lawful use, either for agriculture, or in connection with a planning permission for residential development.
12. Planning permission was granted in 2007, ref 1/0339/2007/FUL ("the 2007 Permission") for the erection of 5 detached 2 storey dwellings and various associated works. The appellant purchased the land associated with Plot 1 ("the Building Plot") and adjoining agricultural land ("the Smallholding Land"). There is no dispute that the 2007 Permission was commenced, but none of the dwellings were built.
13. What has been built, following further planning permissions granted in 2013, 2014 and 2015, are 8 dwellings on some of the Land subject to the 2007 Permission that is not owned by the appellant. There is no express wording within the 2007 Permission to indicate that the individual plots are severable and, therefore, it is no longer possible to build any of the development in accordance with that permission. This approach has been clarified by *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30.
14. As such, the appellant cannot rely on the 2007 Permission to construct Plot 1 or any other house on the Building Plot. The *Hillside* Judgement post-dates comments by the Council's previous enforcement officer that the 2007 Permission could be relied upon and, so, may explain a change in the Council's position in this regard.
15. However, prior to the appellant's purchase of the Land, a further planning permission, ref 1/0188/2011/FUL ("the 2011 Permission") was granted. It is described as a variation of conditions 6, 7 & 10 of the 2007 Permission. At the Hearing, the Council confirmed that an application form for the 2011 Permission indicated that it was intended to facilitate the independent construction of Plot 1.
16. While the 2011 Permission requires development to be carried out in accordance with a site layout plan showing 5 houses, it does not require the development to be completed, and the other conditions have clearly been

devised to facilitate the construction of Plot 1 separately to Plots 2-5. On this basis, I find that Plot 1 is severable from the remainder of the 2011 Permission and the development that has occurred since 2013 would not prevent the lawful construction of the house described therein on the Building Plot.

17. At the Hearing, the appellant explained that, following her purchase of the site, she brought a digger to the site in order to carry out site clearance and ground works in preparation for laying out the foundations the house. She did not go so far as to dig any foundations or even begin the extensive excavations that are required to achieve the proposed finished floor levels of the house. However, works to that extent would not have been possible until South West Water had re-aligned a surface water drain that crosses the site. I was told how their progress was thwarted by ecological constraints, amongst other things.
18. While the site works were limited, I am satisfied that they would have been required in order to mark out and progress the further excavation necessary to construct the house. There is no obvious other reason for them to have been done. While there is no documentary evidence to detail these works, the appellant spoke confidently at the Hearing about what she had done and why. There is no evidence to make her version of events less than probable. Therefore, in the particular circumstances of this case, I find that they were sufficient to be a material operation comprised in the commencement of Plot 1. Accordingly, on the evidence before me, it is more likely than not that the 2011 Permission remains extant.
19. Since the appellant's initial ground works in 2011, no further residential development or associated works have taken place on the Building Plot. Instead, there have been various acrimonious disputes about land ownership and the condition of the Land.
20. I have no remit to intervene or make any comment on those proceedings as part of this appeal against the Notice, except that it is useful to note that in 2018, the Council cleared the Land of all items that were on it and then, later the same day, the appellant parked a 'Mazda Bongo' vehicle where she believes her boundary to be. I understand that it remained in that position until shipping containers were brought to the Land in 2022.
21. Since then, it is apparent that the appellant has brought various other items to the Land. These currently include two shipping containers, one of which has no roof, two caravans, a 'Renault Megane' vehicle, some building blocks and sawn timber, various smaller pieces of timber, metal sheets, poles, water pipes and guttering, a water tank, high visibility barrier fencing, plant pots, compost bins, outdoor chairs, water butts, children's ride-on toys, gas canisters, wheelie bins and a tent. With the notable exception of the second caravan, the photographs appended to the Notice suggest that much of this appears to have been on the Land when the notice was served.
22. The appellant suggests that the items on the Land are associated with the agricultural use of the Land or the development of the Building Plot. I understand that it is not unusual for materials and equipment to be stored on building sites, including in shipping containers, and that potentially useful paraphernalia is often stored around farms.

23. While it may be possible to utilise some of the stored items in the construction of a house, or in the provision of fencing and animal care facilities, the somewhat haphazard manner in which it has been kept suggests that it is on the land on the off-chance that it may be required in the future rather than that it definitely will. The potential exceptions to this were some neatly stacked blocks and timber that I saw behind the shipping containers, and some drain pipe and guttering, although there is only a small amount of this material and it is not clear whether it can really be used in construction of the dwelling that has been permitted.
24. The appellant's stated desire to be kind to nature, educate and allow young people and others to be outdoors and mindful of their environment, and the use of salvaged products in connection with her future plans may be laudable. It might explain the presence of children's toys on the Land. I can also see that there may be a cost benefit in acquiring items when they are available or cheap.
25. However, a large number of items appear to be on the land without any clear purpose. For example, I was told that the metal sheeting was both to repair the roofless container and that it may be used for livestock fencing. There are numerous items, such as the gas canisters and chairs that have not been shown to have a purpose in connection with any lawful use of the land.
26. The containers might have a use for storing building materials during construction, and I understand that there are some, unspecified, tools and equipment within them now. However, the watertight one appears to be largely put to use for the storage of personal items, unconnected with any building work or agriculture. Whether or not it will be repaired, items currently in the open-roofed container include bikes, camping equipment, and rubbish awaiting transfer to a recycling centre.
27. Of the two vehicles, the appellant confirmed that the Mazda Bongo is being used for storage of personal items and has been on the land since 2018 for that purpose. The Renault Megane has been 'written off' and, although the appellant is waiting for the insurance company to collect it, it has been there for some time and can currently only reasonably be described as being stored until such time as it is removed. While in the same street, this is materially different to vehicles kept on private drives or elsewhere along Hamilton Close, that are used by residents for day-to-day activities, in connection with their occupation of residential dwellings.
28. The caravan that was present when the Notice was served is currently being used for poultry housing, but it has not been shown that this is a permanent arrangement, or was used that way when the Notice was served. While it may be possible to have a caravan sited without express planning permission, in connection with building operations on that land, none are currently ongoing. Similarly, in some scenarios, express planning permission might not be required for the provision on land of moveable structures, works, plant or machinery on land, but only for the duration of operations being carried out thereon.
29. While historic disputes and the actions of others may be the main cause of the pause in work, the appellant was unable to give any indication as to when she might be in a position to resume. Meanwhile, the caravans and other items appear to be, simply, stored and no specific provision allowing that to continue

for some indefinite time until works may resume, has been brought to my attention.

30. The absence of other suitable premises may explain the reason that the appellant wishes to keep various items on the Land, particularly those she sees as connected with her future enjoyment of it. However, with regard to the above, even though it may be possible to use a small number of items in connection with a lawful use, it seems more likely than not that most are unconnected and are just stored there. Most of the items are on the Building Plot, or close to it alongside the upper stretches of a track into the Smallholding Land. However, in the absence of any clearly definable boundary between the two, it appears that the use of all the Land is a mixed one, for storage and agriculture. This is materially different to the lawful use of the Land and it has not been shown that there is any planning permission for such a use on any part of it.
31. On the balance of probabilities, therefore, I find that the matters alleged in the Notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Ground (d)

32. Ground (d) is that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged.
33. Evidence from nearby residents indicates that, since at least the 1950s the Land has been used for agricultural purposes. During that time, it is said that a number of items were stored on the site, including machinery, vehicles and animal feed.
34. In the 1990s, the Land changed hands and horses and ponies were kept there. Again, I understand that feed, equipment and machinery was stored on the land, both in a barn which still remains in a somewhat dilapidated condition, and a former larger stable building. It has been said that the then landowners also kept a Land Rover, trailers and horse trailer on the Land. I understand that the Land Rover was used for moving feed and other items around the Land.
35. There is nothing to dispute this version of events or make it less than probable. However, given the described uses, it is likely that all of the stored items, including the Land Rover, were on site in connection with the agricultural or equestrian activities going on at that time. They have not been shown to be so significant, different to, or unconnected with those uses so as to have created a material change of use of the Land to one including storage as a component of a mixed use.
36. After the appellant first cleared the Land in 2011, I understand that she gradually accumulated items until they were removed by the Council in 2018. However, even if the storage of the Mazda Bongo, housing various other possessions since that date, meant that there was no break in storage activities, there is no substantive evidence before me as to when, or if a material change of use began in the first place.
37. As with the appeal on ground (c), the onus is on the appellant to prove their case and, for the above reasons, it has not been demonstrated that, on the

balance of probabilities, the Land was used for a mixed use for storage and agriculture for 10 years prior to the service of the Notice.

38. Therefore, the appeal on ground (d) must fail.

Formal Decision

39. It is directed that the enforcement notice is corrected by:

In Section 3 'The matters which appear to constitute the breach of planning control'

- The insertion of the word "material" before the words "change of use".
- The deletion of the words "shown in the attached plan (Appendix A)".

In Section 6 'What you are required to do'

- The deletion of paragraph (i) in its entirety and its substitution with the text "(i) Cease the use of the Land for the mixed use of storage (B8) and agricultural".
- The deletion of paragraph (ii) in its entirety and its substitution with the text "(ii) Remove all items stored in connection with the mixed use of the Land".

40. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

M Bale

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Sheard

Hugh Parry

Sara Bazaubaa

David Birch

Connor Fellow

Rosemary Haworth-Booth

FOR THE LOCAL PLANNING AUTHORITY:

Kris Evely

Grant McGill

INTERESTED PARTIES:

Karen Ward

DOCUMENTS SUBMITTED AT THE HEARING

HD1 *R (Allsop) v Derbyshire Dales District Council* [2012] EWHC 3562 (Admin)

HD2 *Mansi v Elstree Rural District Council* [1964] 16 P.& C.R. 153

HD3 Undated advice to Ms Sheard in connection with *R (Allsop) v Derbyshire Dales District Council* [2012] EWHC 3562 (Admin)