

Report to Planning Committee

Enforcement Ref: 0046/2020

Appeal Ref: APP/N3020/C/21/3275688 & APP/N3020/C/21/3275690

Location: Land to the West of 175 Mansfield Road, Papplewick

Subject: The construction of unauthorised buildings, security cameras and lighting columns, front boundary walls with lanterns and gates, the erection of two ornamental statues, the material change of use of the land to a mixed used for the storage of vehicles, trailers and vehicle parts and the repairing of motor vehicles, also for the disposal of items by burning and the change of use of part of the access road to a landscaped grassed area and for the siting of two ornamental statues.

Background

Two separate Planning Enforcement Notices were served on the appellant on 23rd April 2021. One related to operational development on site and the other addressed an unauthorised change of use.

Material Change of Use (Appeal A)

The notice outlined the breach of planning control as:

Without planning permission, the material change of use of the land to a mixed used for the storage of vehicles, trailers and vehicle parts and the repairing of motor vehicles, also for the disposal of items by burning and the change of use of part of the access road to a landscaped grassed area and for the siting of two ornamental statues.

The reason for issuing the notice:

It appears to the Council that the above breach of planning control concerning unauthorised material change of use has occurred within the last ten years.

The site is situated in a rural location within the Green Belt where there is a presumption against material changes of use of the land which do not fall within the exceptions given in Paragraph 146 of the NPPF. The storage of motor vehicles, mechanical equipment, tools and vehicle parts on the land, the brick built boundary walls, pillars, electronic gates with lanterns and a domestic type letterbox, and the construction of the wooden three sided building used as a repair workshop, together with ornamental walls sub dividing the land and the change in the character of the stable building by the insertion of doors and windows of a design not compatible with an equine use, together with the lighting and CCTV columns all of which are

associated with the unauthorised use of the land to store and repair vehicles and in addition the change of use of part of the access road to a landscaped grassed area and the positioning of the two ornamental statues, are incongruous features in the Green Belt and in this open area of countryside causing a significant adverse impact on the character of the landscape and contrary to Policy LPD 19 and the principles of the NPPF which seeks to protect the Green Belt with the fundamental aim to prevent urban sprawl by keeping land permanently open.

The use of the site for vehicle repairs and the constant use of recovery vehicles using the private access road creates noise and disturbance for the occupiers of the residential properties to the east of the site. Furthermore, the floodlighting on tall columns impacts on the residents of the properties to the east and the wider area.

The disposal of items on the site by burning on bonfires has caused smoke, smell and light pollution and has also had a detrimental impact on the amenities of nearby neighbours.

The unauthorised use is contrary to the NPPF (2019), Policy 10 of the Aligned Core Strategy and Policy LPD 32 of the Local Plan.

The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

Operational Development (Appeal B)

The notice outlined the breach of planning control as:

Without planning permission, the construction of unauthorised buildings, security cameras and lighting columns, front boundary walls with lanterns and gates and the erection of two ornamental statues.

The reason for issuing the notice:

It appears to the Council that the above breach of planning control concerning built development has occurred within the last four years.

The brick built stable building is not constructed as approved. The fenestration details and the doors are of a domestic design and are not compatible with an equestrian use. The three sided wooden built structure has the appearance of a domestic garage and there is a further domestication of the site with a front boundary treatment, comprising of a brick wall with metal railings on the top, pillars with lanterns and a solid electronic gate, measuring over 1 metre in height which is adjacent to the access road. The landscaping works beyond the front boundary wall and gates with two ornamental statues adds to the domestic feel of the site.

The security lighting and tall poles with CCTV cameras on the top which have been erected on the site, present an industrial feel.

The unauthorised development represents inappropriate development in the Green Belt and reduces the openness of the Green Belt. There is an adverse impact on the character and appearance of the area and there are no very special circumstances to justify the development.

Given the loss of openness to the Green Belt and in accordance with the Framework, the development is inappropriate development which impacts on the Green Belt's purpose of safeguarding the countryside from encroachment and is in conflict with the NPPF and Policy 10 of the Aligned Core Strategy.

The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

Appeals

Appeals against both notices and applications for award of costs were subsequently lodged with the Planning Inspectorate and were determined following a Hearing held at the Council Offices on 28th June 2022.

Appeal A (material change of use) proceeded on the following grounds as set out under Section 174 of The Town and Country Planning Act 1990:

- (b) that those matters outlined in the notice had not occurred,
- (f) that the steps required by the notice exceeded what was necessary to remedy the breach, and
- (g) that the period for compliance falls short of what is necessary.

Appeal B (operational development) proceeded on the grounds:

- (a) that planning permission ought to be granted for part of the breach of planning control,
- (b) those matters (if they did occur) did not constitute a breach of planning control,
- (c) those matters outlined in the notice had not occurred,
- (f) that the steps required by the notice exceeded what was necessary to remedy the breach, and
- (g) that the period for compliance falls short of what is necessary.

Despite withdrawal of the same, consideration was also made to appeal on ground (e) that copies of the notice were not served as required under The Town and Country Planning Act 1990 as not all interested parties were served.

The appellant also submitted an application for full costs against the Council on the grounds that the Council had behaved unreasonably by serving notices that were nullities due to uncertainties of the requirements therein or, in the case where the Notice/Notices were to be quashed, due to them being incorrectly served and defective. They also made an application for partial award of costs should full costs not have been justified.

Decisions

Appeal A (material change of use)

The Planning Inspector considered the details of the case and concluded that the alleged breach of planning control as set out in the notice was incorrect. **The appeal therefore succeeded on ground (b) and the notice quashed.** The remaining grounds for appeal were therefore not considered. The Local Planning Authority was not however at fault for the notice being quashed, as set out below.

The discrepancy lay in part with the breach of planning control identifying storage and repair of motor vehicles instead of dismantling and valeting.

The appellant was duly served with a Planning Contravention Notice (PCN) on 12th March 2021 as part of investigations into the alleged breaches of planning control on site. This notice required information to be provided to the Council regarding the ownership, use and development of the land. The appellant had a statutory duty to respond to the notice but did not provide a response. The Council could therefore only rely on observations made by officers, members of the public and the relevant planning history to draft the enforcement notices. If the appellant had completed the PCN in accordance with their statutory duty, their responses would have been fully considered, prior to the enforcement notices being drafted and served by the Council.

The Council was able to demonstrate that whilst there were faults in the wording of some requirements of the notices, they largely followed from the misidentification of the breach of planning control, which, had the applicant responded to the PCN, would have been avoided.

The appellant had ample opportunity to clarify what activities were taking place on site had he responded to requests and reminders to submit the PCN response. Without this distinction the Council could only act on the information it had. None of the evidence obtained by the Council suggested valeting was being undertaken on site.

It is noted that whilst the notice has been quashed, the Council is satisfied that at the time of the Hearing, the unauthorised change of use regarding vehicle dismantling and valeting had ceased in full.

Appeal B (operational development)

The Planning Inspector considered the details of the case and concluded that the appeal succeeded in part on grounds (b) and (f) and failed on grounds (a) and (g). In view of the success on ground (b), the appeal on ground (c) did not need to be considered. **Amendments to the wording of the notices were made and the appeal dismissed.**

It was identified late on in the appeals process that not all interested parties had been served with the notice. The Council demonstrated that the land registry plan is not entirely clear in terms of the precise extent of the front boundary and other land ownerships. Clarification should have been provided as part of the PCN response that was legally required. The PCN included a red line plan outlining the site of concern which included parts of the development subject to the notices served. It also specifically sought confirmation of the appellant's interest in the land and requested details of the full name and address of anyone else with interest in the land.

The Planning Inspector has removed from the notice all reference to breaches and requirements that lie outside of the appellants ownership and has amended the red line of the plan accompanying the notice accordingly. These areas will now be subject to separate investigation and enforcement action where necessary.

The appellant is now required to undertake the following works within 3 months of the date of the decision, being by 2nd November 2022:

- 1) Alter the brick built stable building to accord with drawing 06/151/01 approved by planning permission reference 2006/1064.
- 2) Demolish the unauthorised three sided wooden building (as identified on a plan attached to the notice).
- 3) Remove all other lighting and security camera columns from the land.

Outcome-Costs

The Planning Inspector considered the details of the case and concluded that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Policy Guidance, was not been demonstrated in either application. **Both applications were therefore dismissed with no costs awarded.**

It is noted that based on the evidence presented at the Hearing the Inspector commented that "had there been a response to the PCN, a diligent authority would have reviewed its assumptions and considered the need for dialogue or further investigation. It would therefore be unreasonable to hold the Council wholly responsible for the costs the applicant incurred in the appeal in terms of the

misidentification of vehicle valeting and dismantling as the storage and repair of vehicles.”

With regards to the stable building, which was demonstrated not to have been built in accordance with approved plans, the Inspector concluded “it has not been shown that there was no lawful reason for enforcement action to be taken in respect of its variation from the approved drawing, if deemed expedient.”

Recommendation: To note the information.