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# Appeal Decision

Site visit made on 12 December 2023

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 January 2024**

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**Appeal Ref: APP/D3640/C/22/3301935**

**Land Lying to the East of Highams Road (Four Oaks Nursery), Highams Lane, Chobham, Woking, Surrey GU24 8TD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Mould against an enforcement notice issued by Surrey Heath Borough Council.
- The notice, numbered 21/0235/ENF, was issued on 24 May 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from an agriculture (Horticultural nursery) use, to a mixed use of; Storage and Distribution of building materials (B8) and the use of the land as a Bus/Coach parking depot (Sui-Generis). In addition the carrying out of unauthorised operational development including the installation of a hard surface for the creation of an ancillary car parking compound in connection with the unauthorised use(s). As well as the unauthorised placement of containers on the land for commercial storage and the unauthorised erection of wooden structures on the land without planning permission within the last 10 years.
- The requirements of the notice are:
  - i). Cease the use of the land edged red on the site location plan, for storage and distribution (B8) purposes;
  - ii). Cease the use of the land edged red on the site location plan, and indicated in green in the centre of the plan for Bus/Coach parking in connection with the bus/Coach Depot and remove all associated vehicles, storage units, and maintenance equipment from the land.
  - iii). Cease the use of the land edged red on the site location plan, for the storage of building supplies for sale/distribution.
  - iv). Cease the use of land edged red on the site location plan, further indicated and hatched black for the parking of vehicles associated with the unauthorised use(s) as a car parking area.
  - vi). [*sic. NB. there is no requirement v).*] Demolish the wooden structure located in the blue shaded area on the site location plan.
  - vii). Demolish the wooden structure in the middle of the site as shown in the area hatched black on the site location plan
  - viii). Remove all associated equipment brought on to the site in connection with the above uses, including storage racks and portable units/containers from the land.
  - ix). Following completion of steps i).-viii). Remove all of the hard-core aggregate, sub-base and materials used to form the hard-standing area(s) for the car park and the bus/coach depot from the Land edged red on the site location plan
  - x). Following completion of step ix). Above, any excess earth, aggregates or other material to be removed from the site, to an authorised place of disposal.
  - xi). Following compliance with the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the land and its environs before re-seeding the earth with a native species grass seed mix.
- The period for compliance with the requirements is: Four (4) months after the notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary Decision: The enforcement notice is quashed.**

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**Preliminary Matters**

1. The site address given above comes from the enforcement notice (the Notice). While I note that the Parish Council have indicated that the address should refer only to Highams Lane and not Highams Road, I am satisfied that the Notice adequately identifies the land to which it relates.
2. During the appeal, I wrote to the main parties seeking views in connection with a number of concerns I had about the service and drafting of the Notice. I have had regard to the responses received about the drafting in reaching my decision. It also appears that not all those with an interest in the Land were served a copy of the Notice directly. It would be most appropriate to consider the parties' responses on this matter through an appeal on ground (e), that copies of the enforcement notice were not served as required by the Town and Country Planning Act 1990 as amended (the 1990 Act).

**The 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 Notice in order. My powers under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement 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. There are a number of typographical inconsistencies, such as misplaced commas, semi-colons and capital letters that hinder the reading of the Notice and its interpretation. Most of these are minor matters and, except where specifically referred to below, it is likely that typographical corrections could be made without causing injustice to the parties. The Notice should also be corrected at Section 2, which identifies the land to which it relates, by specifically defining it as 'the Land' with reference to 'the Plan' attached to the Notice. This is because the Land is referred to throughout the allegation and requirements. Such corrections would simply add clarity and precision and would not result in injustice.
5. The Notice alleges numerous different breaches of planning control. The primary allegation is one of a material change of use to a use that is said to be a mixed use that comprises the storage and distribution of building materials and the use of land as a bus/coach parking depot. There is reference within the allegation of the storage and distribution component to 'B8', which the Council has confirmed is a reference to Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). It is also suggested that the bus/coach parking depot would be a sui generis use. However, a mixed use is a single sui generis use that does not fall within a class of the UCO.
6. The inclusion of reference to the UCO, and separately to the bus/coach depot as a sui-generis use, introduces some uncertainty that, perhaps, two new

separate primary uses, rather than a single mixed use are alleged. Added to this, in the second part of the allegation referring to operational development, there is reference to an ancillary car parking compound created 'in connection with the unauthorised use(s)'. The inclusion of '(s)' in use(s) adds further doubt as to whether one or two uses are alleged.

7. As the Notice must be read as a whole, other parts of the Notice add to the uncertainty as to what is alleged. While not an operative part of the Notice, the reasons for issuing it at Section 4, refer to 'the unauthorised change of use of the land to a coach park/bus depot, and to commercial storage and distribution of materials including reclaimed building supplies and other materials' (my emphasis). This describes the bus/coach depot subtly differently and adds further detail to the storage and distribution use. The uses are listed in a different order. There is no reference to a mixed use and the text appears to separate the two components of the use into separate uses through the words I have underlined.
8. The requirements of the Notice at Section 5 make no reference to a mixed use whatsoever. The requirements should follow logically from the allegation, but requirements i)., ii). and iii). refer separately to storage and distribution uses and the bus/coach parking depot use. This adds doubt as to whether the Notice intends to target separate uses of the site, as opposed to a single mixed use.
9. Furthermore, the requirements that appear to relate to the storage and distribution use are further split into two sections, with requirement i). relating to general B8 uses, and requirement iii). relating specifically to the storage and distribution of building supplies for sale/distribution.
10. Given the two separate requirements, it is unclear whether a further use is being targeted here. That is, whether requirement i). goes beyond just the storage and distribution of building materials to a more general B8 use. Requirement iii). more closely reflects the allegation, albeit referring to 'building supplies' rather than 'building materials'. It also refers to 'sale', which is not part of the allegation, although the parties have both indicated that removal of that specific component would not cause injustice in itself.
11. Requirement ii). relating to the bus/coach depot use refers to the Land as a whole, but also to specific land indicated in green on the Plan. This introduces uncertainty as to whether the Notice is targeting all of the Land, or just the section indicated in green. While the Council has suggested that reference to the green-edged land could be deleted, reading this requirement as drafted on its face, is a further suggestion that the bus/coach depot use is so distinct from the other uses at the site that the Notice only need target a specific part of the Land in connection with it. Indeed, the Council's main evidence describes it as 'clearly separated from the rest of the land', albeit subsequently being suggested that other land may also be associated with it. The requirement also only requires the cessation of parking in connection with the depot use. It is not clear whether parking is the only function of a depot or whether other activities would be allowed to continue. The requirement is, therefore, unclear.
12. The above inconsistencies mean that, within its 4 corners, the Notice read as a whole fails to provide the recipient with reasonable certainty as to what they have done and what they must do to remedy it. Indeed, while the Council has confirmed that a mixed use is the intention, and given reasons why this should be the case, the appellant has not understood this. Their position and their

whole approach to the appeal is based upon the Notice alleging a material change of use to separate uses.

13. Towards the end of the allegation, there is also reference to the placement of containers on the land for commercial storage and the erection of wooden structures. It is unclear from the wording of the allegation whether these are part and parcel of the alleged change of use or separate breaches of planning control. The appellant has dealt with them as separate matters.
14. I am also concerned that the allegation may not be correct because it does not refer to horticultural uses. The appellant is adamant that the horticultural nursery use is continuing on the Land and, at my site visit, I saw a significant number of plants, despite the winter season. The Council now seem to accept that there are some plant-related activities ongoing on the site but dispute the extent to which it should be considered horticulture. The extent of any continuing horticultural uses, whether they are true agricultural uses, and their relationship to the other uses at the site may also affect the way that a breach of planning control should be described.
15. For the reasons given above, I find the Notice to be invalid, but not so hopeless as to be a nullity. I have, therefore, considered whether I could correct the Notice, although uncertainties over the uses ongoing at the site make it difficult to be certain what the allegation should be. If I were to accept that the allegation should be a single mixed use comprising a use for the storage and distribution of building materials and a use as a bus/coach parking depot, I could also correct the requirements so that these are consistent with the allegation (i.e. that they require the cessation of the mixed use).
16. However, having regard to the case made by the appellant, it is likely that, in response to such an allegation, they would have approached the appeal in a different way. They may also have made an appeal on ground (b) such as to make the case that a material change of use to a mixed use has not occurred at all, or that the mixed use as alleged does not correctly identify all of the uses going on at the site. I cannot, therefore, correct the Notice without causing injustice to the appellant.
17. There are other defects in the Notice, including reference to the containers without specifying their location, references to a black hatched area when there are two identified on the Plan, a requirement to remove hardstanding from the bus/coach depot which is not in the allegation, and an apparent requirement to do things beyond the confines of the Land. All of these, together with the typographical inconsistencies, would require correction such that, even if they did not individually cause injustice, collectively would result in a significantly different Notice to the one issued by the Council. That may also change the appellant's approach to the appeal, indicating further potential injustice.
18. With regard to the above, I conclude that the Notice is invalid and incapable of correction without causing injustice. It must, therefore, be quashed and the grounds of appeal do not fall to be considered.

### **Formal Decision**

19. The enforcement notice is quashed.

*M Bale* INSPECTOR