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# Appeal Decision

Site visit made on 10 September 2013

**by David Murray BA (Hons) DMS MRTPI**

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

**Decision date: 9 October 2013**

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**Appeal Ref: APP/C3105/C/13/2195008**

**Land south of Cropredy Road, Great Bourton, Banbury, Oxfordshire, OX17 1QU.**

- 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 M Boulton against an enforcement notice issued by Cherwell District Council.
- The Council's reference is 12/00347/EUNDEV
- The notice was issued on the 22 February 2013.
- The breach of planning control as alleged in the notice is the change of use of agricultural land to a mixed use comprising agriculture, domestic garden use, and use for the open storage of vehicles.
- The requirements of the notice are to 1) cease using the land for domestic garden purposes; 2) cease using the land for the storage of vehicles; 3) remove from the land the hardstanding; 4) remove from the land all timber and chicken wire enclosures and timber shelters; 5) remove from the land all domestic paraphernalia and items of a domestic garden nature including, but not limited to all greenhouses, the plastic playhouse; the metal garden trellis; all ornamental trees and all seating and benches; 6) reinstate to grass any bare land exposed by the removal of the above items.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

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## Preliminary matters

1. This case was linked with 2194995, however, the cases involve different appellants and different parcels of land although they adjoin, and different allegations of unauthorised development. I have therefore made separate decisions on the cases.
2. The Council have provided updated information in that since the issue of the enforcement notice, the Council has issued a Certificate of Lawful Development which certifies that on the 27 March 2013 the area of rolled gravel hard standing and a lean-to pig pen were lawful. This provides protection for these aspects from the requirements of the enforcement notice unless there is some other material change in circumstances.

## Background

3. The site is a narrow length of agricultural land, comprising about two hectares in total and which extends away from Cropredy Road. At the time of my visit, the land contained a gravel hardstanding at the entranceway; a timber building with stable doors and a small greenhouse attached; a wooden store/garage

building with three tractors, two old cars and a trailer inside; outside on the hardstanding was a touring caravan, horse box and light van. Separated from the more open fields was an enclosed area of grass which also contained two small wildfowl/chicken pens and various small items which could be described as domestic paraphernalia, and ornamental trees. In the field there were some loose boxes for pigs and other stock.

### **The Notice**

4. Part of the breach of planning control specified in the alleged mixed use is the storage of vehicles. This leads to the requirement 5(2) requiring the storage of vehicles on the land to cease. However, at my site visit I noted the presence of a number of tractors and other vehicles related to agricultural use on the land and their presence would not amount to development. It is not clear from the terms of the notice whether these vehicles fall within those to be removed. However, I can correct the notice and make it clear in the requirements that the vehicles to be removed are other than those designed for agricultural purposes and used for such purposes within the agricultural unit. Such a correction would not cause injustice to any of the parties.

### **Appeal on ground (c)**

5. The appellant's submissions under this ground are limited and it is also said that he will comply with the notice and not use the land as domestic garden and agrees to stop using the land for the storage of vehicles. He also considers that the hardstanding is lawful by the passage of time. Finally he submits that the chicken/ducks and geese timber and wire pens and shelters are agricultural development and do not need planning permission.
6. First of all, the issue of the hardstanding and pig pen has been overtaken by events with the Lawful Development Certificate now granted as explained in paragraph 2 above. In respect of the two matters alleged in the notice comprising a mixed use along with agriculture, a domestic garden use and use for the storage of vehicles are materially different to an agricultural use and require planning permission as a material change. The Council stress that there is no lawful residential use at the site. Although most of the vehicles stored on site and much of the domestic paraphernalia may have now been removed, on the basis of the evidence put forward, I have no reason to doubt the Council's case that at the time that the notice was submitted, these uses as forming a mixed use with agriculture, constituted a breach of planning control.
7. Further, the appellant is correct in saying that the planting of trees is not development, but the planting of ornamental trees is integral to and would help perpetuate the character of a domestic garden use. In accordance with the principle established by the Court decision in *Murfitt*<sup>1</sup>, it is not unreasonable that the notice requires their removal so that the land can be returned to its condition before the material change of use took place.
8. Finally, in relation to the wildfowl and chicken pens, although these are related to the agricultural use, the structures accommodate livestock and would not benefit from the provisions of the Town and Country Planning (General Permitted Development) Order 1995, as amended, in relation to Schedule 2 Part 6, as it has not been demonstrated that the structures used for the keeping of livestock would be more than 400 metres from the curtilage of a

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<sup>1</sup> *Murfitt v SSE [1980] JPL 598*

protected building as set out in subsection B.1. On this basis these structures are a breach of planning control.

9. I conclude on this ground that the development specified in the notice does require planning permission and in the absence of a deemed or express permission constitutes a breach of planning control. The appeal on this ground therefore fails.

#### **Appeal on ground (f)**

10. The appellant does not make any real submissions under this ground that the requirements of the notice are excessive and lesser steps would overcome the breach.
11. Although the alleged breach of planning control is the mixed use including use as a domestic garden, as I have explained above, it is reasonable for the notice to require the removal of physical elements that are integral to the use itself. The requirement to remove the greenhouses, playhouse, garden trellis, seating and ornamental trees and other domestic paraphernalia does no more than have the land put back to its state before the unauthorised use commenced. I am therefore satisfied that it is not excessive. The appeal on this ground therefore fails.

#### **Conclusions**

12. For the reasons given above I consider that the appeal should not succeed, but in upholding the notice I will correct it as indicated in paragraph 4 above.

#### **Decision**

13. The enforcement notice is corrected by the insertion in paragraph 5(2) after "...vehicles" the words " other than those vehicles designed for agricultural purposes and used for such purposes within the agricultural unit;"
14. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

*David Murray*

INSPECTOR