

Appeal Decisions

Site visit made on 15 September 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

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

Decision date: 10 October 2016

Appeal A: APP/F0114/C/16/3150371

Appeal B: APP/F0114/C/16/3150372

Land at Meadow Combe, Rectory Lane, Compton Martin, BS40 6JP

- 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 John Mapplethorpe (Appeal A) and by Mrs Sally Mapplethorpe (Appeal B) against an enforcement notice issued by Bath & North East Somerset Council.
 - The notice was issued on 20 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of land from agriculture to residential curtilage.
 - The requirements of the notice are:
 - Requirement 1: Stop using the land as residential curtilage.
 - Requirement 2: Dismantle the stock-proof fence marked XXXXXX on the attached plan and remove all resulting materials from the land
 - Requirement 3: Re-seed the land with mixed meadow grass.
 - The period for compliance with the requirements is one month.
 - The appeals are both proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Preliminary matters

1. The notice alleges, without planning permission, the change of use of land from agriculture to residential curtilage. Curtilage defines an area of land in relation to a building and not a use of land. It is the duty of an Inspector to correct a notice if that can be done without prejudice to any party so that appeals can be determined on the correct basis. It seems to me that what is being alleged is a material change of use of land from agriculture to use of land incidental to use as a dwelling. As I am satisfied that no party would be prejudiced by this assessment, I shall amend the notice breach and requirement 1 accordingly and I shall determine the appeal on this basis.
 2. Some of the representations made by the appellants and others relate to the planning merits or otherwise of the alleged development and the reasons for issuing the notice. Since no appeal on ground (a) that planning permission should be granted has been made, these matters are not for my consideration. Furthermore, it is not open to me to grant planning permission if there is no ground (a) appeal and so therefore the ability to impose any planning conditions to overcome any injury to amenity does not arise.
 3. The appellants claim that it was not expedient or a proportionate response for the Council to issue the enforcement notice. They also make representations about whether the Council acted in accordance with the Local Enforcement Plan
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2013. As an Inspector, I have no jurisdiction to determine such issues. That is a matter for the Council.

4. The neighbours at The Chase say that their hedgerow which adjoins the land has been cut back. That is not part of the allegation and is a civil matter not for my determination. There is a gate within that rear hedgerow. That has not been directly blocked albeit that free access into the larger field is prevented by the new fence. Any right of access onto any land is not for me to consider within this appeal and is a civil matter. Furthermore, the conditions of sale of the land are contractual matters rather than matters for these appeals.
5. The neighbours at The Chase are concerned that a ransom strip has been created, but the land in the field had not been within the neighbours' control and there is no directly adjacent public footpath on the pasture. No doubt the transfer of ownership gives the appellants control of that land as its owners, but this is not a matter that is pertinent to the ground (c) and (f) appeals that are before me.

Applications for costs

6. Applications for costs were made by the appellants against the Council. These applications are the subject of separate Decisions.

Ground (c) appeals

7. This ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, if they have occurred, did not constitute a breach of planning control.
8. The land to which the enforcement notice relates is a strip of land some 30m by 2m according to the Council. The land is sited at the rear of The Chase and has been sectioned off by a post and wire fence from the rest of the field. The appellants have bought this strip of land from the owner of the rest of the field which is currently pasture. Access to the strip of land is now obtained from the adjacent garden of the appellants' home at Meadow Combe.
9. A black plastic membrane has been laid on most of the land, which the appellants say is a method of preparation, management and of weed control. Small uncovered parts of it have been planted with winter wheat and osier. The appellants say that there has been no change of use of land as the land remains in agricultural use and that they have accessed it rarely. Their stated intention is to grow test crops or osier.
10. The land is not directly behind the appellants' house but is behind the adjacent dwelling. It is nonetheless part of a longer strip of land that also runs behind the appellants' house. The rest of the land was not planted at the date of my site visit nor has black membrane been laid upon it. The appellants say that it is inconsistent of the Council to have issued an enforcement notice against only part of the area. The Council says that it was open to them to under-enforce and that they do not consider a change of use of the land directly at the rear of Meadow Combe to be objectionable. It is not for me to consider whether there has been a breach of planning control on the rest of the strip.

11. S55(1) of the Town and Country Planning Act 1990 (the Act) defines development as including the making of a material change of use of any buildings or other land. This comprises activities carried out in, alongside or on the land.
12. The Council alleges a material change of use. Whether or not there has been a material change of use is a matter of fact and degree. There needs to be some significant difference in the character of the activities from what has gone on before.
13. This land has only recently come into the ownership of the appellants, has not been subject to any planning applications as far as I am aware and has not been argued to be part of the domestic garden at any time previously in the past. That it is now in the appellants' ownership does not necessarily indicate that there has been a material change of use since the ownership changed. Neither does the fact that this is only a small strip of land that could not be farmed easily by mechanical means or be highly productive.
14. Agriculture is defined in s336(1) of the Act. This definition includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, osier land, and market gardens. S55 (2)(e) of the Act specifies that the use of land for agriculture is not development.
15. As far as I can tell the appellants are using only a very small part of the land to grow a very small seed crop and a few osier plants. The appellants claim to be testing how productive the land is for various types of crops before seeking to purchase further land but there is no agreement presented in this respect. Test crops are only grown for part of the year. The appellants say that it is reasonable to establish productivity before they enter into negotiations to purchase further areas of land from the farmer, but the size of the patch planted was so small as to introduce doubt that this would be of any real benefit for that purpose.
16. It seems to me, as a common sense interpretation, the use of a membrane to cover most of the land and to prevent any growth, which is argued to be required for management is inconsistent with growing anything on the land or any other use for agriculture. It does not have the appearance of agricultural land because of the membrane. The land does not have the appearance of an allotment either.
17. Furthermore, a hedgerow at the rear of Meadow Combe has been removed and the land is not now separated from the residential garden, albeit that it is not directly behind it, and it has been fenced off from the rest of the field. The land has gone from being part of an agricultural holding to being part of a residential planning unit. The appellants are retired and do not claim to be employed in agriculture. There has been a material change in the character or the activities and use of the land.
18. For all these reasons, I conclude that the land is being used for purposes incidental to use as the dwelling of Meadow Combe.
19. For all these reasons the appeal on ground (c) fails.

Ground (f) appeals

20. The appeals are made on the grounds that the steps required by the notice to be taken exceed what is necessary to remedy the breach of control, or to remedy any injury to amenity which has been caused by the breach. In this case, the notice seeks to remedy the breach of planning control by ceasing the use, removing the fence, and re-seeding the land. The appellants have not put lesser steps but instead seek to put matters that would resolve loss of privacy or amenity rather than resolving the breach.
21. Given my conclusions in respect of the ground (c) appeals where I have concluded that a material change of use has taken place, it follows that the first step would remedy the breach and is not excessive.
22. The appellants say that the requirements would prevent the installation of a ground source heat pump as "permitted development". Nevertheless, they now concede that it would not be suitable for that use and have also conceded that this use would not be permitted development on agricultural land as it would be only be permitted development if within the residential curtilage under Schedule 2 part 14 class C of the GPDO 2015.
23. The Council claim that the removal of the fence is necessary to revert the land back to agriculture. It seems to me that the erection of the fencing facilitates the extension of use incidental to the dwelling onto agricultural land and this is a necessary part of the change of use.
24. The second step would result in the fence being removed. That would be commensurate with the breach. There is no appeal on ground (a) to consider the planning merits of the fence in terms of preventing stock from entering the land or marking land ownership. Furthermore, no alternative lesser steps have been put to me by the appellants that would achieve that purpose of the notice that I could clearly specify.
25. The third step requires the land to be re-seeded to grass. I understand that the field has been pasture use for very many years. It would restore the land to its condition before the breach took place and hence this requirement is not excessive.
26. For all these reasons the ground (f) appeals fail.

Conclusion

27. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Decisions

28. The enforcement notice is corrected by replacing the breach of planning control alleged in the notice with the words "without planning permission, the material change of use of land from agriculture to use of land incidental to use as a dwelling.", and replacing Requirement 1 with the words "Stop the use of the land as use of land incidental to use as a dwelling."

29. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Julia Gregory

Inspector