
Appeal Decision

Site visit made on 16 January 2017

by Simon N Hand MA

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

Decision date: 20 January 2017

Appeal Ref: APP/H1840/C/16/3153514

Land at Wood Farm, Peopleton, Pershore, Worcestershire, WR10 2DZ

- 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 Michael James Fryer against an enforcement notice issued by Wychavon District Council.
 - The enforcement notice was issued on 19 April 2016.
 - The breach of planning control as alleged in the notice is 3.1 without planning permission, the unauthorised change of use of agricultural/orchard land to an area of hardstanding approximately 20 x 25 metres; the siting of storage containers; the creation of parking bays; the storing of a touring caravan; and the storing of a portable building. 3.2 Without planning permission, the unauthorised change of use of agricultural/orchard land to domestic garden, including the erection of a brick and timber pagoda structure with seating area; and the siting on agricultural land of two shipping containers not being used in connection with the agricultural use of the land
 - The requirements of the notice are 5.1 Permanently to remove from the Land the portable building shown shaded yellow on the attached plan. 5.2 Permanently to remove from the Land the parking bays and the touring caravan shown shaded green on the attached plan. 5.3 Permanently to remove from the Land the shipping containers shown shaded black on the attached plan. 5.4 To remove from the Land entirely the hardstanding shown outlined in red on the attached plan, to include the top surface hard core base and kerb edgings, and to restore the Land to its original condition, namely that of agricultural/orchard land. 5.5 Permanently to remove from the Land the brick and wooden pagoda structure and seating area shown shaded purple on the attached plan. 5.6 To cease the use of the Land outlined in blue on the attached plan as domestic garden land and to restore the land to its original condition, namely that of agricultural/orchard land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is varied by deleting "5.3 Permanently to remove from the Land the shipping containers shown shaded black on the attached plan" and "5.6 To cease the use of the Land outlined in blue on the attached plan as domestic garden land and to restore the land to its original condition, namely that of agricultural/orchard land" from section 5 of the Notice "What You Are Required To Do". Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background to the Appeal

2. Planning permission was granted in the early 1990s for a farm workers dwelling on the land. This dwelling is currently occupied by the appellant. A condition required the dwelling to be occupied by an agricultural worker, and a s106 obligation further “inextricably linked” the dwelling to the land and farm buildings. In 2006 a lawful development certificate was granted to the effect that the condition No 1 on the planning permission for the dwelling had not been complied with. Although it is not clear from the wording of the certificate I assume this means the dwelling had been occupied by a non-agricultural worker for a sufficient period to render the condition no longer enforceable. Following this another s106 was entered into, in which the Council recognised there was no further need to tie the dwelling to the land and buildings. This later obligation dated 2007 discharged the original obligation so there is now no tie between the dwelling and the agricultural land either in planning or legal terms.
3. In 2014 an application was made by the appellant for planning permission for a hardstanding and the siting of 5 storage containers for personal use. This was refused and a subsequent appeal also refused. The Inspector found the hardstanding was being used for parking and storage of three caravans and various items of plant and machinery. At that time the machinery was used in connection with the appellant’s agricultural contracting business and the containers used for personal storage and by the occupiers of the adjacent barn which was in B1 light industrial use. The Inspector found the containers, the caravans and the plant and machinery were all clearly visible from the road which harmed the rural character of the area.
4. As far as I am aware this is the full relevant planning history of the site. The appellant is under the impression that once the link between the dwelling and the agricultural holding was broken this gave permission to use the land for non-agricultural purposes. This is not the case, however. Unless there has been a planning permission or a lawful development certificate of which I am not aware, then the lawful use of the land is either agricultural or residential curtilage associated with the dwelling. The same is the case for the barns, which will only have a lawful agricultural use. The appellant suggests the non-agricultural uses have been going on for some time, but I have no evidence for this.
5. The site covered by the enforcement notice is a large rectangle of land split into two unequal parts. The quarter nearest the road contains the dwelling, buildings and storage uses while the rest is an open field. The following description is confined entirely to this front quarter. The dwelling stands in the centre at the back of this front portion, attached to a large garage. In front is a large area of lawn, split by an access drive. The area to the right of the drive, when looking from the road and directly in front of the dwelling is the area described in the notice as unlawfully changed from orchard to residential use, noted (2) on the enforcement notice plan. It contains the pagoda, in a half-finished state, number (3) on the plan. To the left is another lawn, not mentioned in the allegation and beyond that some buildings which appear to be used for a variety of purposes, also not mentioned in the allegation. To the right of the garage, at the back of the site are the two remaining containers, number (4) on the plan, standing in front of a small area of scrubland. In front of them is an area of vehicle parking and two large barns being used for what

seem to be B1 uses. At least one is a motor vehicle repair workshop, as they use the 2 containers for storage. In front of these two barns is the rectangular hardstanding numbered (5). This has a number of parking bays set out on it, delineated by a type of motorway crash barrier, numbered (6) and space where the portable building had been stored (numbered (7)) but which has now gone. The caravans, were also parked on the hardstanding and have been removed, but they are not specifically identified in the notice. There is a touring caravan next to one of the barns which the appellant says has been there for years.

The Appeal on Various Grounds (b), (c) and (d)

6. The appellant is not represented and has taken a rather scattergun approach to his evidence, as a result of which an issue has been raised on a number of grounds for some of the above items. For ease I shall deal with each one separately below and then consider whether planning permission should be granted.
7. Firstly the site is not, as explained above, granted permission for anything other than agriculture, although anyone can live in the dwelling. The appellant says he has been operating various B1 and B8 uses for years, but this appeal is not concerned with those uses, only with the specific items mentioned in the allegation. I make no comment therefore whether those uses have become immune from enforcement through the passage of time or not.
8. The hardstanding is unlawful and there is no evidence it has been in place for more than the 4 years which would be required for a material operation. Planning permission was refused for it on appeal and nothing has changed since then. It is not being used for any purposes incidental to the use of the dwellinghouse and so cannot be permitted development within Class F of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015, and is within 25m of the road and so does not fall within the agricultural exemptions of Class B of Part 6.
9. There seems to be no dispute the lawn area, numbered 2, was previously in use as an orchard. It would have been a part of the agricultural use of the site and so the lawful use is agricultural or orchard. The appellant says the trees were rotten and were removed some years ago, but I have no evidence as to when this was, but in any event that would not have necessarily triggered a material change of use if the land was still used, for example, as a paddock. The fact that a pond was created is also of little help, as this does not necessarily suggest a residential use. Now it has the appearance of a regularly mown front lawn and it would seem it is now a residential use. This is a material change of use and as there is no evidence it took place more than 10 years ago, is unlawful. I make no comment on whether this lawn area could be said to be curtilage, as I have no evidence as to what the garden area of the original dwelling would have been.
10. The pagoda has clearly been erected in the middle of the former orchard land. The pagoda could only have been permitted development if that land were part of the curtilage of the dwelling and it was not in front of the dwelling. As neither is the case the pagoda cannot be permitted development.
11. The storage containers would seem to be in a different position than when the previous Inspector visited the site as they are no longer adjacent to the barn, but behind it. They are being used by the occupiers of the B1 units and so are

nothing to do with the residential use of the dwelling. The appellant provides evidence they were delivered to the site in 2004, but the bill of sale does not tell me which containers they were or what location they were placed in. It also does not say whether they have been in place continuously ever since. They are obviously not meant to be mobile, but are placed in one location for use in that location. I consider the placing of the containers on the land is therefore development, rather than a material change of use, but I have no evidence they have been in place at the location shown on the enforcement notice plan for 4 years or more.

12. The touring caravans that the previous Inspector saw have been removed, but another caravan is still on the site. The appellant argues this is not one of those caravans and is not subject to the notice. It is not clear from the allegation exactly which caravan is referred to but the requirements refer at 5.2 to a caravan shaded green on the notice. It does not seem that green area covers the area where the touring caravan is stored on site and it seems reasonable to me to assume it refers to one of the tourers that were stored on the hardstanding and seen by the previous Inspector which had not been removed when that appeal was lost. The touring caravan I saw on site next to the barn and not on the hardstanding appeared to be in a poor state and did not seem to have been moved for many years. I do not consider it to be part of the allegation and conclude that the part of requirement 5.2 that refers to caravans has been carried out.
13. The parking bays are on the hardstanding and the hardstanding itself is unlawful so the bays must be removed if the hardstanding is. They cannot have a life separate from the hardstanding and so cannot be lawful under any of the above grounds.
14. The portable building has been removed and no claims are made as to its lawfulness. Consequently, I do not consider any of the above uses or items can be considered to be lawful but shall consider each one as part of the ground (a) appeal.

The Appeal on Ground (a)

15. The Council mention policy SWDP 25 Landscape Character of the South Worcestershire Development Plan which requires proposals in rural areas to be appropriate to and integrate with the character of the landscape setting. The site is a large open area in front of the dwelling and barns, bounded by a low hedge next to the road. There are houses nearby, but it is a predominantly rural setting in an open rural landscape.
16. I have also been provided a copy of policy SWDP 12, which deals with farm diversification and the expansion of existing rural employment sites. I am not certain of the relevance of this policy as this may well not be a lawful employment site, nevertheless the policy requires that intensification of the existing site should be the first consideration before any uses expand onto agricultural land.
17. The hardstanding has already been considered in detail by the previous Inspector and I have no reason to disagree with his view that it stands out in the rural area. Although the policies are different now, their effect is similar and the large area of hardstanding, along with the uses it could support, including the parking of plant and machinery, positioned next to the road in

front of the barn are clearly intrusive and harmful, contrary to SWDP 25. The appellant argues he needs the hardstanding for turning his larger vehicles but I have no evidence that other parts of the site that are less intrusive could not be used, and the hardstanding is therefore also contrary SWDP 12.

18. The caravans and portable building have been removed and I do not consider them. The parking bays have an industrial appearance and should be removed along with the hardstanding. They are intrusive and harmful.
19. The area of orchard that stands in front of the dwelling has the appearance of a lawn. It stands in an area where a lawn would be expected to be and next to another large lawned area. Because of its close relationship to the dwelling it would actually look rather odd if it were used for agricultural purposes. In my view the material change of use from agriculture or orchard to residential use does not harm the character and appearance of the area and does integrate into the landscape setting. It is not contrary to SWDP 25.
20. The pagoda is a large and unsightly structure. I accept it is unfinished, but once complete with windows all around it would be incongruous and out of place, particularly in its prominent position in the middle of the lawn in front of the house. It's retention is contrary to policy SWDP 25.
21. The two shipping containers are located behind one of the B1 barns, at the back of a parking area and in front of an area of scrub. Whatever the actual lawful uses of the land, it is not unusual to find this type of informal storage associated with barns and parking areas in rural areas. The containers are not readily visible from the road and are not intrusive in the landscape, consequently, they are not contrary to policies SWDP 25 or 12.

The Appeal on Ground (f) and Conclusions

22. No separate arguments have been raised under ground (f) that the requirements are excessive. I have found that all the items in the allegation are unlawful and that all except for the two containers and the material change of use of the orchard to residential land should be removed. The easiest way to achieve this is to refuse the ground (a) appeal and uphold the notice, but also to delete requirements 5.3 and 5.6. The effect of that is to grant planning permission by way of s173(11) for the two shipping containers, in the location shown on the enforcement notice plan numbered (4), and the area of lawn numbered (2) on the plan.

Simon Hand

Inspector