
Appeal Decisions

Hearing held on 5 January 2017

Site visit made on 5 January 2017

by C Sherratt DipURP MRTPI

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

Decision date: 10 February 2017

West Liddaton Farm, Coryton Devon, Okehampton, Devon EX20 4AD

- 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 James Henry against an enforcement notice issued by West Devon Borough Council.

Appeal A - Ref: APP/Q1153/C/16/3149560

- The enforcement notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is a material change of use of the Land without planning permission from Agriculture (Sui Generis) to Residential Garden (C3) (the 'Development'). It appears to the Council that the above breach of planning control has occurred within the last 10 years.
 - The requirements of the notice are to:
 1. Cease use of the agricultural field (the site (see Fig.1 – land edged red)) as an area for residential garden and remove all domestic items including the swing / play equipment and prefabricated garage (NGR position E: 245633 N: 082603);
 2. Remove all non-agricultural vehicles from site and thereafter refrain from parking / using the land for the parking of such non-agricultural vehicles.
 - The period for compliance with the requirements is 4 weeks.
 - 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.
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Appeal B -Ref: APP/Q1153/C/16/3149564

- The enforcement notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is operational development for the installation of a pre-fabricated garage. It appears to the Council that the above breach of planning control has occurred within the last four years.
 - The requirements of the notice are to remove the prefabricated garage (NGR position E: 245633 N: 082603) from the site.
 - The period for compliance with the requirements is 4 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A - Ref: APP/Q1153/C/16/3149560

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B -Ref: APP/Q1153/C/16/3149564

2. The appeal is dismissed and the enforcement notice is upheld.

Reasons

Appeal A – ground (d)

3. For the appeal to succeed on ground (d) the onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a residential garden for a continuous period of 10 years or more prior to the issue of the notice. Once a change of use has occurred in breach of planning control, it needs to continue substantially uninterrupted before it accrues immunity from enforcement action and thereby lawfulness. The relevant date is on or before 25 April 2006.
4. I heard that the appellant purchased the property and land that includes the area subject to the notice during the 1980s. Various re-grading and re-seeding works were carried out on the land over time. A Beech hedge separates the land that is the subject of the notice from another parcel of land that has been used as a garden and become lawful over time. The appellant considers that the land that is the subject of the notice has been used as a garden since 2003/2004. He explained it has been used by his children and grandchildren as a recreational / amenity play area. There is now some shrub planting of the type that might reasonably be found in a residential garden.
5. The appellant's family have, prior to December 2005 kept horses on their land. There was some discussion at the hearing about whether this could reasonably be regarded as a residential use of the land and exactly where the horses were kept and grazed. I am not satisfied, based on the evidence before me, that the use of land for the keeping of horses in a separate paddock adjacent to the property would comprise a residential use of land. However, I have no reason to doubt that, on the balance of probability, the land in question was no longer used as a turnout area for horses after the last horse that the family owned died in early December 2005. The written evidence of a neighbour is that when this horse died it was in the area identified in the notice and where the area of hardstanding is now.
6. In support of the appellant's case aerial photos are provided. The oldest is dated 31 December 2005. It shows the use of the land to the east of the Beech hedge as garden with a landscaped pond area. However, I do not share the appellant's view that the aerial photo clearly shows that on the balance of probability the appeal site was not being used for agricultural purposes. In any event, it would not follow that if it was not being used for agricultural that its use must be residential. Whilst, a small area of hardstanding appears to be evident from this photo¹, it is not possible to ascertain, on the balance of probability, any residential use. Even if the land was being mowed this would not be sufficient to demonstrate a residential use. No domestic paraphernalia or other indications of residential use are apparent.

¹ There is no requirement in the notice for any hardstanding to be removed.

7. The written evidence of a neighbour confirms that a timber pergola type structure was erected to link the two areas either side of the hedge in May 2006. The date is not disputed by the appellant. Indeed it appears to be in place on an aerial photo dated June 2006. I accept that this is not definitive of any start date for the use of the land as garden. It would however make the passage from one area to the other more convenient and create a more formal link. The appellant explained that access from one area to the other was always possible at either end of the beech hedge.
8. The evidence to support the appellant's stated use of the land is scant. The aerial photos are of little assistance to show a material change in the characteristics of the land. No supporting evidence is provided to show that the land was used as a family recreational / amenity space or how frequently and whether it was continuously and only used for residential purposes throughout the relevant period.
9. To conclude, the evidence is not sufficiently precise or unambiguous to demonstrate, on the balance of probability, that the land has been used as a residential garden for a continuous period of 10 years or more.

Appeal A – ground (a)

10. The main issues are the effect of the development on:
 - (a) The character and appearance of the area; and
 - (b) The living conditions of the occupiers of the neighbouring property.
11. Policy NE10 of the West Devon Borough Council Local Plan (LP) does not permit development in the countryside unless a number of criteria are met. In particular, development must not cause unacceptable harm to the distinctive landscape character of the area and the important natural and manmade features that contribute to that character including views. Strategic Policy 17 of the West Devon Borough Council Core Strategy (CS) requires that the quality, character, diversity and local distinctiveness of the natural and historic environment will be conserved and enhanced.
12. The appeal site is adjacent to a small cluster of buildings, predominantly in residential use that would have once formed part of a farm. Although now in a number of different ownerships, the buildings and associated areas of land are in relatively close proximity to each other, with a shared access.
13. The small group of buildings are situated within open countryside. The use of the land to the east of the hedge as garden was established over time rather than with the benefit of planning permission. With this exception, the boundaries to the properties are relatively tight to the buildings with limited garden space. The lawful garden area is an uncharacteristic intrusion into what was part of a field. The formal laying out of a pond and hard landscaping is at odds with the surrounding agricultural landscape. To allow a further substantial increase in the size of garden would cause further intrusion and erosion of the character of the surrounding area. The shrub planting and pergola already detract from the agricultural character of the immediate area. Further domestic trappings that would not constitute development such as tables and chairs, trampolines, washing lines and planting akin to a garden use would only add further unacceptable harm to the character and appearance of the surrounding countryside contrary to relevant policies.

14. I recognise that the residential use of the land is likely to result in a further increase in activity associated with that type of use. Given the close knit pattern of the group of buildings any change in activity and introduction of residential paraphernalia would undoubtedly be noticeable to the occupiers of The Barn who have habitable room windows facing towards the appeal site, particularly in terms of their outlook. However, there would be comings and goings outside the windows in any event given the close proximity of the shared access drive. I do not consider that this change would unacceptably compromise the living conditions that the occupiers might reasonably expect to enjoy or justify the refusal of planning permission.
15. To conclude, for the reasons set out above, it is considered that the material change of use of land to residential garden would unacceptably harm the character and appearance of the area contrary to relevant policies. The appeal on ground (a) fails.

Appeal B – ground (b)

16. For an appeal to succeed on ground (b) it is necessary to demonstrate that the development referred to in the notice has not occurred as a matter of fact and degree. In this case the appellant argues that no operational development has occurred because the garage structure referred to in the allegation is a temporary structure. Operational development comprises activities which result in some physical alteration to the land which has some degree of permanence (S55 (1) of the Act). S55 (1A), inserted by the 1991 Act, defines “building operations” to include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder. Case law has established the tests to determine if something is a building operation. These are size, permanence and physical attachment.
17. The structure comprises a frame with a heavy duty PVC / canvas type cover. I heard that it came in kit form and was assembled on site. The appellant describes it as a tent whereas the local planning authority suggests it resembles a marquee and compare it to the Court of Appeal judgement that considered *Skerrits of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.
18. The structure, used as garage, has been in the same position since it was erected around November 2015. It could be dismantled with relative ease and quickly. This is in contrast with the *Skerrits* marquee which the Inspector considered would take several days with a number of erectors to erect, amounting to a sizable and protracted event. Nevertheless, from the evidence I heard there is clearly an intention for it to remain in the same position indefinitely whilst still fit for purpose unless planning permission is secured for some alternative garaging accommodation. Whilst it is not of the size and scale of the marquee referred to, it is not so transient that it lacks permanence. It is fixed to a timber frame which sits on the ground with no physical attachment. The absence of physical attachment is not in itself decisive and clearly it is of sufficient substance to be anchored by its own weight although I heard that in windy conditions heavy stones are used at the corners to give it extra stability.
19. To conclude, as a matter of fact and degree, I consider the structure due to its degree of permanence in particular and anchorage primarily through its own sturdiness is a building for planning purposes. The appeal on ground (b) fails.

Overall Conclusions

20. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices. I refuse to grant planning permission on the deemed application (Appeal A).

Claire Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Edward Persse	Of EJFP Planning Ltd
J D Henry	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Wendy Ormsby	For South West Devon Council
Cllr Terry Pearce	Ward Councillor

DOCUMENTS

- 1 Correspondence dated 17/02/2015 from Robert Page to Chris Horan.
- 2 Enlarged extract from aerial photo dated 31/12/2005.