

Appeal Decision

Inquiry and site visit held on 20 June 2017

By Mr A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 30 June 2017

Appeal ref: APP/Y2620/C/16/3155261

Land at The Barn, Bolding Way, Weybourne, Holt NR25 7SW

- 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 Act’].
 - The appeal is made by Mr Charles Harrison against an enforcement notice issued by North Norfolk District Council.
 - The enforcement notice was issued on 1 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission: (1) The material change of use of the land to use as a campsite, and (2) The erection of an amenity block to facilitate the campsite.
 - The requirements of the notice are to: (1) Cease using the land as a campsite and (2) Demolish the amenity block and remove the resultant debris.
 - The period for compliance with the requirements is as follows: Two months with step (1) and four months for step (2).
 - The appeal is proceeding on the grounds set out in section 174(2) (d)¹ of the Act.
 - The Inquiry sat for one day
 - All of the evidence was affirmed at the Inquiry.
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Decision

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

Reasons

2. Mr Harrison’s submission is a simple one, namely, that the change of use, alleged on the notice, is immune from enforcement action due to the passage of time. He says that a seasonal campsite use began on or before 1 July 2006, the relevant date, and has continued thereafter without interruption for a period of 10 years.
3. The law is clear. It says that where there has been a breach of planning control comprising a material change in the use of land, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach². Jurisprudence indicates that the onus of proof is firmly on the appellant in this legal ground of appeal. If the Council has no evidence of its own, or from others, to contradict or otherwise make Mr Harrison’s version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is, on the balance of probability, sufficiently precise and unambiguous³.

¹ Section 174(2)(d) states that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

² Section 171B of the Act.

³ The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviews the relevant case law regarding the onus of proof on an appellant.

4. In the light of *Burdle*⁴ there was some debate about the relevant planning unit, which I should address. The description of the land under the occupation of Mr Harrison is outlined in the statement of common ground. It includes various residential buildings and holiday accommodation as well as separate parcel of land. The extent of his land is outlined in blue on plan B. The notice relates to a discrete parcel of land outlined in red on plan A⁵.
5. The site comprises an area of grassland located to the rear of a group of buildings. It is accessed via a track; it is physically defined by landscaped boundaries and includes a livestock compound. There are four defined pitches where Yurts have been constructed. In addition, there are various pitches with electric supply that serve campers or campervans. A separate purpose-built amenity block serves as a toilet and shower facility. There is broad agreement that, during the period leading up to the issue of the notice and when it was actually served, the site was in a residential campsite use. That is what I observed at the time of the Inquiry. Because of the significant degree of physical and functional separation, I concur with the appeal parties that the site constitutes a self-contained planning unit.
6. In 2014 Mr Harrison sought to regularise the development, but planning permission was refused by the Council and subsequently on appeal⁶. In these proceedings Mr Harrison's immunity claim focusses on the alleged change of use. He accepts that the campsite use exceeds the 28 day limit set out in schedule 2, part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended⁷. The claim is that the site can lawfully be used for seasonal residential camping purposes.
7. In this type of case comparisons between the use of the site at the date the notice was issued and the use as it existed 10 years before are reasonable and necessary. It may be necessary to go further back in history to determine when the relevant breach of planning control took place and work forward 10 years. Mr Harrison contends that the change of use occurred in July 2002. At the time rudimentary facilities, such as portaloos, were used to facilitate camping activities. In 2005 a dedicated water supply, drainage and electricity was installed. Additionally, a static caravan was stationed and used for amenity purposes. Although a British Naturism⁸ event was held at Holkham Beach in July 2002, the evidence about the use and seasonal nature, scale and timings is unclear. In cross-examination, Mr Harrison did not precisely recollect when the use started as he could not remember any specific date, nor could he recall the sequence of events. He admitted that no specific records had been kept. This lack of attention to detail affects the weight I attach to his testimony.
8. The evidence about the nature and scope of the site's previous use is weak and ambiguous. Mr Harrison admitted that the site was used as an overflow for visiting guests. He affirmed that it had been used to keep horses on by visitors staying at the holiday cottages. He acknowledged that it had been used for livestock grazing, that it is ploughed and reseeded to ensure a good surface for guests.

⁴ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

⁵ Plan A and B are attached to the enforcement notice.

⁶ Council ref: PF/14/0450 appeal ref: APP/Y2620/A/14/2228336 dismissed 23 March 2015.

⁷ Came into force 15 April 2015 but the relevant part is the same as the now repealed version.

⁸ Dated 18 September 2014.

9. Additionally, the unchallenged aerial imagery provides a snapshot of the site's condition and layout from about 2004. The latter clearly shows the site as a field that reinforces the argument it had been put to an agricultural use. In 2010 it is depicted as grassland; a rectangular object indicates the existence of a mobile home. The 2011 photograph shows a change in the site's arrangement, configuration and layout as two defined Yurts had been erected. I find the 2014 image particularly instructive of the site's condition because it shows a dramatic increase in the number of defined pitches; four Yurts had been erected by that time, and there is a self-contained livestock enclosure. There is no plausible explanation to counteract or undermine the veracity of these aerial images, to which I attach substantial weight.
10. Likewise, Mr Harrison's characterisation of the previous use is contradictory. For example, at section 14 of the application for retrospective planning permission, the existing use is described in the following terms: '*Summer time – campsite for 10 tents + 4 Yurts (Mongolian tents) winter time – small holding*'. The explanation advanced is that he was not professionally represented at the time and was not aware of the planning process. In cross-examination, however, he could not provide any plausible explanation as to why he did not provide any specific detail of the claimed campsite use, given his argument that it had started in July 2002.
11. The evidence about how camping had actually been conducted continuously and consistently throughout the relevant period is ambiguous. Who actually used the campsite, when and to what extent is lacking in specificity. In support of the substantive case much is made of a diary record from 2003 onwards. These have been presented in spreadsheet format showing the name of campers, number of pitches and night stays between July 2003 and September 2016. In cross-examination, however, Mr Harrison conceded that this type of evidence does not sufficiently show the nature of the site's use throughout the relevant period.
12. I consider that the record shows an intermittent and slight seasonal camping use from about July 2003 to September 2008. The number of pitches varied from 21 to 55 and night stays from 44 to 78. In contrast, most striking is the data from around 2009 onwards. From May 2009 to September 2016 the number of pitches falls somewhere between 62 and 174; night stays from 106 to 525. To my mind, this dramatic increase in scale was a game-changer in the nature of the site's use. Mr Harrison said that change was occasioned by the sale of a large holiday cottage accommodating 12 persons. He says that the business was struggling yet there is no documentary evidence to support that assertion. Sale particulars or detail of when the cottage was sold have not been submitted. So there is imprecision as to what followed from the closure of the holiday cottage and the subsequent change in the site's appearance, layout and subsequent use.
13. There is an added complexity. This is because individual names of visitors using the campsite are given but there is no supporting documentary information showing how payments for tent pitches were made; that might have assisted in verifying Mr Harrison's testimony. In addition there is no verifiable statement from any individual visitor. I consider that the absence of this type of evidence makes comparisons difficult to make. I am told that, because of work commitments, it was unnecessary to call independent witnesses. That

admission confirms a lack of attention to detail. All of these shortcomings affect the weight I attach to this evidence.

14. Pulling all of the above points together, on the balance of probabilities, I find that the evidence presented about the previous use of the site is contradictory, confusing and lacking in specificity. The information about the nature, scale and timings of the activity is incomplete and lacks credibility, because it does not unambiguously show, to my satisfaction, that the material change of use, as alleged on the notice, occurred on or before 1 July 2006.
15. On the contrary, Mr Stedman Jones' submission that the evidence presented points in the likelihood the site was in agricultural use with some kind of low-key, passive and intermittent seasonal residential camping use is persuasive. In 2010 or thereabouts it appears the nature, extent, scope and scale of activity significantly changed, occasioned by physical alterations to the site's configuration and layout. Mr Middleton, an interested party who was subjected to cross-examination, undisputed evidence was that the site's use after 2010 resulted in marked increase in vehicular movements to and from the holiday complex. That suggests some kind of off-site impact. I consider that the Council could not have taken enforcement action before 2010, because there had been no breach of planning controls in the use of the disputed area – the site.
16. In my planning judgement, the sum of Mr Harrison's evidence points in the possibility that the change in the definable agricultural with discreet and limited seasonal camping activity occurred within the relevant 10-year period. That finding is fatal to his case. On evidence, I therefore reject Mr Schofield's submission, although forcefully and elegantly put, that it is too late to take enforcement action⁹.

Conclusion

17. For all of the above reasons, and on the particular facts and circumstances of this case, the burden of proof has not been discharged because there is sufficient evidence before me to make less than probable Mr Harrison's version of events. I conclude that ground (d) fails and, having regard to all other matters, the appeal should be dismissed.

A U Ghafoor

Inspector

⁹ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 applied.

APPEARANCES

FOR THE APPELLANT:

Mr Tim Schofield	Appeared on behalf of the appellant as Advocate
He called	
Mr Charles Harrison	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Daniel Stedman Jones	Of Counsel instructed by North Norfolk District Council
He called	
Mr John Pearce	Planner

INTERESTED PERSONS:

Paul Middleton	Local resident
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DOCUMENTS

- 1 Letter of notification
- 2 Mr Harrison proof of evidence.