



## Appeal Decision

Site visit made on 1 July 2017

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

**Decision date: 4 July 2017**

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### **Appeal Ref APP/U1105/C/16/3165193**

### **Land south of Southleigh Road, south west of Heathayne Cross, Colyton EX24 6RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Jodi Canti against an enforcement notice issued by East Devon District Council.
- The notice was issued on 31 October 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of a material change of use of the Land to use for the siting of a wooden building and decking, shown edged in blue on the plan attached [*to the notice*], for domestic purposes.
- The requirements of the notice are: (1) cease the use of the Land for the siting of the wooden building and decking for domestic purposes; and (2) Permanently remove from the Land the wooden building and decking.
- The period for compliance with these requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

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### **Formal Decision**

1. I direct that the enforcement notice be corrected by:
  - i. the deletion of the words in paragraph 3 of the enforcement notice and their replacement with the words "*Without planning permission, the making of a material change in the use of the Land from agriculture to a mixed use for agriculture and domestic use of a wooden chattel and area of decking, shown edged in blue on the plan attached*" [*to the notice*];
  - ii. the deletion of the words "*for the siting of the wooden building and decking*" in paragraph 5.1 of the enforcement notice, so that it would read "*Cease the use of the Land for domestic purposes*"; and,
  - iii. the deletion of the word "*building*" in paragraph 5.2. of the enforcement notice and its replacement with the word "*chattel*".
2. Subject to these corrections the appeal is dismissed and the notice is upheld.

### **Procedural matters**

3. The notice subject of this appeal alleges a material change of use and, amongst other things, section 4 thereof says the alleged breach has taken place within the last 10 years. As the Council observe in section 2 of its appeal statement, the Appellant has not claimed that the allegation is for the wrong breach and so it appears to be common ground that the object, to use a neutral term, is moveable. Although the allegation is somewhat unusual in the manner in

which it is framed, ultimately it is concerned with a domestic use of a chattel<sup>1</sup> that has been stationed on the land. In these circumstances, whilst I have considered whether there should be a correction to allege a building operation<sup>2</sup>, my approach in this matter must be guided by the evidence. I shall therefore deal with this appeal on the basis of the respective arguments that are made.

4. The main parties concur that the relevant parts of the appeal site can be seen from public land and that it would be unnecessary to enter the site to check measurements etc. My inspection confirmed it was possible to see the object clearly from the public footpath. Whilst it might have been advantageous to inspect the interior of the object to gain an understanding of the facilities that it and the Shepherd's hut has, given the consensus between the main parties I elected on balance not to require access to the site. Amongst other things the Council has provided photographs of the interior to which I shall have regard.
5. The Appellant has lodged the appeal in person and in section A of the appeal form has written "NA", conventionally not applicable, where the form asks for the company name. I note this contrasts with the planning application form, which stated the company name to be "*Equiessence Ltd*". This might suggest that the company is no longer operating<sup>3</sup>. However it is conceivable that the Appellant continues to trade from this land, albeit not as a limited company. Accordingly to the extent that the application submission describes the business use it remains appropriate to take that information into account.

#### **Ground (b)**

6. Under this ground of appeal the Appellant needs to show that: "*...the breach of control alleged in the enforcement notice has not occurred as a matter of fact*" [as per section E. (b) of the appeal form]. The Guidance says<sup>4</sup> in enforcement appeals the onus of proof in respect of matters of fact is on an Appellant.
7. The grounds of appeal simply say: "*The alleged domestic purposes have not occurred. The property is rated for non-domestic rates – all activities on the field are related to my business use*". First, I agree with the Council that how the object, or indeed the wider land, is rated is not conclusive as to how it is actually used. Moreover no evidence is provided to support the Appellant's contention. For these reasons I attach this factor extremely limited weight.
8. Focussing on the use, the Appellant's letter dated 27 March 2017 says the use of the land has not changed and that current activities comprise beekeeping and the rehabilitation of horses/ponies. It is said that the cooking facilities are used to sterilise bee keeping equipment and for the production of honey, and the cat flap allows 'working' cats to keep vermin under control. The Appellant's letter dated 1 June 2017 says horses are solely grazing the land and that the other attributes of the object, such as the curtains, blinds and other domestic paraphernalia are: "*...simply what any person would expect in the workplace*".
9. Noting the onus of proof, my first concern is that there is virtually nothing in this submission to positively explain what the object is used for. There is no reason to doubt that the object is used in connection with bee keeping but the scale of that use has not been explained and whilst I accept that one might

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<sup>1</sup> The Appellant used this term herself in her letter to the Council dated 1 October 2014.

<sup>2</sup> A fair reading of the delegated report might suggest that was the Enforcement Officer's original view, but the notice that has been issued relates to a use rather than a building, which would have related to a 4-year period.

<sup>3</sup> This might explain why a copy of the notice appears to have been served on the Government's legal department.

<sup>4</sup> See for example paragraph: 053, Reference ID: 16-053-20140306.

- need to check on the bees every few months, the actual extraction of honey is likely to take place just once a year. I also accept that it might be used by the cats for shelter and somewhere to go in inclement weather, but the Appellant acknowledges that the permitted Shepherd's hut has a cat flap too and so this object cannot reasonably be justified to meet the needs of the resident cats.
10. The object has been sited in close proximity to the Shepherd's hut, which was granted planning permission under application No 14/2315/FUL. Condition 4 of that permission restricts the hut's use to an: "*...office/rest room in connection with the equestrian business operating from the site and for no other purpose, including any residential use or use for overnight accommodation*". The term "*office/rest room*" is taken from the application form. I have reviewed the remainder of that submission and note that it says the solar panels, permitted as part of that application, provide power for internet and phone access. One of the permitted arcs was used for the storage of tools, animal feed, tack etc. In other words the business activities appear to have been fully catered for by the planning permission that was granted by the Local Planning Authority.
  11. In that context it is entirely unclear what business function the Appellant claims that the object subject of this notice serves. Whilst I note that the Appellant's application submission said she spends between 35 and 45 hours a week on the land, apart from tending animals which would appear to take place outside, no reason is given why the other key purposes, generically liaising with clients, are not reasonably met by the Shepherd's hut. Among other things one of the photographs of the Shepherd's hut dated 28 October 2014 shows a propane gas cylinder connected to the Shepherd's hut and the reasonable conclusion is that this served some sort of cooking device, e.g. to make a cup of tea. Based on the evidence before me, I am led to the conclusion that the Appellant has failed to explain what business use the object subject of this notice is used for.
  12. Nevertheless the Council alleges the object is used for domestic purposes. In my view domestic does not necessarily equate to residential. The former is defined as: "*of or relating to a home or family affairs or relations*", whereas the latter is explicitly: "*designed for people to live in*"<sup>5</sup>. The Appellant says the only residents are animals and so given the specific terms of the allegation it would appear to be common ground that no person lives in the object<sup>6</sup>. In short the question becomes: is the object primarily used for domestic purposes?
  13. The photographs appear to show a room which, if it were in a house, might be described as a snug or cosy retreat. Amongst other things there are: blinds on the double doors, curtains at the windows, a large rug on the floor, a picture and possibly a mirror on the wall, a rocking chair and another comfy chair, a coffee table with, amongst other things, a mug and a glass on it, a dining room table and chairs<sup>7</sup>, various drawer and shelf units with ornaments and books on them, what appears to be a kitchen unit<sup>8</sup>, a narrow shelf with milk cartons on it, a towel rail and a small chest of drawers. Outside there is what the Council

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<sup>5</sup> Both definitions taken from the Oxford English Dictionary.

<sup>6</sup> I note the delegated report asserts that the Enforcement Officer: "*...previously had enforcement issues with this site concerning a shepherds hut that Ms Canti was living in...*" [*my emphasis*]. However, whilst there is some speculation, the report does not make any direct allegation of a similar nature in respect of the object subject of this notice, which supports my finding.

<sup>7</sup> There is at least one chair and what appears to be a computer screen under the table near the window.

<sup>8</sup> As already noted the Appellant's letter dated 27 March 2017 refers to "cooking facilities" and the photographs appear to show a saucepan hung on the wall, a kettle and various bottles of milk associated with this unit.

calls a decking area and what appears to be a second rocking chair<sup>9</sup>. Whilst I note the cat, feed bowls and a single animal feed bag in one corner, the overall impression from the photographs is encapsulated in the word domesticity. The delegated report describes it as: "...very domesticated"; I agree. This appears to be a home from home. Somewhere where a person spends a great deal of time<sup>10</sup>. There is nothing in the photographs to suggest it is used for business use, but even if I might be wrong it has not been explained how it is so used.

14. For the above reasons I consider that the allegation is a fair reflection of the manner in which the object appears to be used. Conversely the Appellant has failed to articulate how this apparent scene of domesticity is actually used for business purposes. Even if the cooking facilities in the object have been used in association with bee keeping it has not been shown, as a matter of fact and degree, to be the primary use of the object. My view that this ground of appeal should not succeed is reinforced by the fact that I am only able to attach the totality of the Appellant's evidence very limited weight in the absence of any sworn evidence, such as a statutory declaration, or other documentary or photographic evidence to support the unsubstantiated claims that are made.
15. I conclude that the ground (b) appeal must fail because the onus of proof to show that the alleged breach has not occurred as a matter of fact has not been discharged. Nevertheless my review of the evidence does suggest that the allegation needs to be corrected to reflect the other use that subsists on the land, which section 2 of the notice defines to be the whole 4 hectare site<sup>11</sup>.
16. The other use subsisting would appear to be within the definition of agriculture in section 336 of the Act. The Appellant's letter dated 1 October 2014 says the land is in use for agricultural purposes. The Appellant's letter dated 1 June 2017 maintains: "*The horses are solely grazing the land...*". On the limited evidence before me, bee keeping on the appeal site would not appear to be a materially different use. Whilst the 2014 submission refers to foaling mares, the definition of agriculture includes breeding of livestock. Accordingly I shall correct the allegation to refer to a mixed use, including agriculture, and since I am satisfied that this reflects the actual use of the land, as defined, I can be satisfied that this change can be made without injustice. Reflecting what is said in paragraph 3, above, since it appears to be common ground that the object is not a building I shall adopt the word chattel in its place and allied to that it is appropriate to change the verb to reflect section 55 of the Act. Again I can be satisfied that there would be no injustice from this correction because it fairly reflects the case put by the parties that the object is a not a building<sup>12</sup>.

### **Ground (c)**

17. The Guidance states that the Applicant is responsible for providing sufficient information to support an application for a Lawful Development Certificate. Lawful development is development against which no enforcement action may be taken, amongst other things because it did not involve development or require planning permission. Since this is the equivalent of ground (c) in an enforcement appeal the Appellant needs to show that: "...*there has not been a breach of planning control*" [as per section E. (c) of the appeal form].

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<sup>9</sup> The photographs are all taken on the same day, within minutes of each other, and on this basis it would appear that this is a different chair from that shown in the internal photograph.

<sup>10</sup> The Appellant's letter dated 1 June 2017 admits: "*It is not in dispute that 'considerable periods of time' are sometimes spent on site...*".

<sup>11</sup> Area taken from answer to question 21 of the planning application form dated 11 September 2014.

<sup>12</sup> As defined in section 336 of the Act.

18. The grounds of appeal just say: *"Permission has been granted on 23 Dec 2014 ref: 14/2315/FUL for the siting of storage/shelter arcs and Shepherds hut"*. It is absolutely clear that the planning permission, No 14/2315/FUL, does not permit the chattel subject of this notice. It expressly permitted: *"Retention of shepherd's hut and 2 no storage/shelter arcs; retention of solar panels"*. The decision notice expressly incorporates: *"the application and the plans attached thereto"*, which unambiguously relate to the development as described. As I have already noted the application makes clear that no material change of use was proposed and that the use subsisting was agricultural. Any inference that the planning permission permitted this use and chattel is demonstrably false.
19. This is the only explicit basis on which the ground (c) is made. Nevertheless, having regard to the generality of the Appellant's submission, I shall briefly address the issue of materiality. For reasons given under the ground (b) head I am unconvinced by the Appellant's claim that the use that is made of the chattel is part of the agricultural business use. A domestic use is not ordinarily incidental or ancillary to agriculture and in this instance has not been shown to be so. It appears to be a materially different use that is likely to have planning consequences that go to, amongst other things, the character of the use of the land and the manner in which it is used. On the limited information before me I cannot therefore be satisfied that the use, which I am satisfied has taken place as a matter of fact, does not represent a breach of planning control.
20. I conclude that the ground (c) appeal should fail because the domestic use is unrelated to the lawful agricultural use. It has not been shown that it does not represent the making of a material change in the use of the land, as defined. As it is clear that neither the use nor the chattel was permitted by the extant planning permission, I conclude there has been a breach of planning control.

### **Other matters**

21. A handwritten note attached to the enforcement appeal form says the plan is not to scale and the wooden object is a quarter of the size indicated. However the plan does appear to be a scaled plan, albeit not to a conventional scale<sup>13</sup> and hence it is impossible, for all practical purposes, for me to scale from it. Although the Appellant might be correct in saying that the area edged blue is larger than the footprint of the object, there is no claim that the object is not located within the land edged blue. Moreover there is no dispute that the land edged red is correct. In these circumstances no purpose would be served in trying to more accurately plot the area edged blue and in any event since the object is mobile it could be moved anywhere within the land, as defined. For these reasons there is no need to correct the plan attached to the notice.

### **Conclusion**

22. For the reasons given, having regard to all other matters raised, I conclude the appeal should be dismissed and I shall uphold the corrected notice.

*Pete Drew*  
INSPECTOR

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<sup>13</sup> The plan says 1: 1,406 and this appears to be in order to fit the whole land, edged red, onto an A4 sheet.