
Appeal Decisions

Site visit made on 27 June 2017

by Paul Dignan MSc PhD

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

Decision date: 17 August 2017

Appeal A: APP/D0121/C/17/3172376

Appeal B: APP/D0121/C/17/3172377

Land on the north side of Church Lane, Hutton, Weston-super-Mare, Somerset.

- 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 J Topham and Mrs Julie Topham respectively against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 2016/0402, was issued on 21 February 2017.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from agriculture to a mixed use of agriculture and equestrian use.
 - The requirements of the notice are: i) Cease the use of the land for equestrian use; ii) Remove the stable building, edged blue on the attached plan, and return the land to its former state; iii) Remove all equestrian items and paraphernalia including fencing tape and wooden posts from the land.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered in appeal A. Appeal B is proceeding on grounds (b), (c), (f) and (g).
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Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Topham against North Somerset Council. This application is the subject of a separate Decision.

Ground (b)

3. The appeals concern the use of land on the southern side of Church Lane. The land is within the Mendip Hills Area of Outstanding Natural Beauty. This ground is that the matters alleged to constitute a breach of planning control have not occurred, as a matter of fact. Under this ground it is claimed that the land, which has been subdivided by fencing off a public right of way running diagonally across it, forming 2 fields, remains in agricultural use, that is for grazing and for growing fruit.
4. The appellants are keeping a native pony in the fields, but they maintain that the pony is merely grazing the land and that the use is therefore agricultural.

As the appellants point out, even where a pony is used for domestic recreation purposes, as here, factors such as the provision of supplementary feed or the use of the land for exercising or training may help to establish whether horses are merely grazing a field, which may be an agricultural use, or whether there is in fact an equestrian use of the land. This is clearly a reference to the case of *Sykes v Secretary of State for the Environment*¹.

5. In this case the Council does not dispute the appellants' claims that there is no supplementary feeding or that the land is not used for exercising the pony, or indeed for any other related recreational activity. However, it points to items such as the provision of a stable building and fencing tape and posts as indicative of the land being used for the keeping of the pony rather than simply using the land for grazing.
6. Regarding the stable building, the nature of this structure is a matter of dispute between the parties, the appellants claiming that it is a mobile structure and the Council that it is a building. This is not a matter that needs to be resolved in the context of this ground (b) appeal, but the use of the building or structure does have a bearing on the question of the purpose for which the land is being used. The appellants claim that the structure is a mobile shelter for storing hay and as a winter shelter for grazing animals, rather than being specifically for equestrian use. Their evidence is that the need for the structure arose from the loss of a hay crop stored on the land in the open. The structure has the appearance of stables, but I accept that it has not been used as such, albeit one open fronted section is kept available for the pony to use for shelter when it is in the same field. From the evidence available, and my own observations, I am satisfied, on the balance of probability, that the structure is primarily used for agricultural purposes. So far as the temporary fencing is concerned, such items are in day to day use in many agricultural grazing systems and should not be seen as paraphernalia associated with an equestrian use. It is merely an aid to pasture management. I saw no other paraphernalia on the land that might indicate an equestrian use.
7. The judgement in *Sykes* established that simply turning horses out onto land with a view to feeding them from the land amounts to grazing. What does not fall within the definition of agriculture is the keeping of horses, but the *Sykes* judgement recognised that horses may be both grazed and kept in the same place. In determining which of these is the primary use, the question that must be addressed is "what is the purpose for which the land is being used?". In my judgement the character of the use of the land in this case has remained agricultural. The pony is grazing a small portion of the land, the associated temporary fencing is used for grazing management, and the building/structure is used primarily for agricultural rather than equestrian purposes. As matter of fact and degree I consider that there has not been a change of use of the land from agricultural to a mixed use of agricultural and equestrian. The appeals succeed on this ground and the notice will be quashed. The remaining grounds of appeal do not therefore fall to be considered.
8. I have not made a finding about the nature of the structure/building on the land. Had I agreed with the Council that it was a building and hence operational development, I would have had to consider correcting the notice to include the erection of a building as a separate and additional breach of planning control.

¹ *Sykes v Secretary of State for the Environment and Anor* [1981] 42 P&CR

Otherwise, amongst other things it would not have come within the terms of the deemed planning application. Such a correction could only have been made if it did not cause injustice. In view of the appellants' success on ground (b) I consider that there would be a likelihood of injustice arising from such a correction, and accordingly it is not a matter that I can resolve.

Paul Dignan

INSPECTOR