



Appeal Decision

Site visit made on 1 August 2017

by Paul Dignan MSc PhD

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

Decision date: 24 August 2017

Appeal Ref: APP/Y3940/C/16/3162032

Little Acre, land adjacent to the A338, Winterbourne Earl, Salisbury, SP4 6HJ.

- 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 Mrs Jane Andrews against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice, numbered 15/00313/ENF, was issued on 20 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use from agriculture to a mixed use of agriculture, residential and the keeping of horses.
 - The requirements of the notice are: 5.1 Permanently cease the occupation of the land for all residential and ancillary residential purposes; 5.2. Permanently remove all residential and associated items ancillary to the residential use of the land, (including all ancillary residential items in the cross hatched building including kitchen facilities as well as all ancillary residential items in the area around the cross hatched building such as washing line and summerhouse); 5.3 Permanently remove the mobile home and two touring caravans from the land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on grounds (f) and (g), and it is directed that the enforcement notice be varied by the deletion of Requirement 5.2 and the substitution of the following requirement: "5.2 With the exception of one fridge, one cooker, one sink and one kitchen unit, permanently remove all residential and associated items ancillary to the residential use of the land, including all ancillary residential items in the cross hatched building including kitchen facilities, subject to the exception above, as well as all ancillary residential items in the area around the cross hatched building such as washing line and summerhouse"; and by the substitution of 12 months as the period for compliance. Subject to these variations the enforcement notice is upheld.

Reasons

2. Little Acre is a long narrow strip of land beside the A338 just outside of Winterbourne Earl. It has access from the public highway towards the northern end of the side. To the north of the access is a cluster of structures and buildings, including a stables building granted planning permission in the 1980's. To the south of the access the land is mainly pasture, with a small sand school at the southern end. Mrs Andrews bought the land in 2014, apparently in the belief that it had been in use for residential purposes by the previous owner for a number of years. She

lives there with her granddaughter and another, using a mobile home and parts of the fixed structures, keeping show quality and retired Connemara ponies. The grounds of appeal included ground (d), which is that it was too late to take enforcement action, but the appeal on that ground has now been withdrawn.

Ground (f)

3. This ground of appeal is that the steps required to be taken are excessive. The steps in a notice are intended to achieve the purpose of either remedying the breach of control that has occurred or remedying any injury to amenity (sections 173(3) and (4) of the Act). In this case the notice is clearly aimed at remedying the breach of planning control. In the absence of an appeal on ground (a), general planning considerations, policy or amenity arguments cannot be introduced under ground (f). The only point at issue therefore is whether the requirements exceed what is necessary to remedy the particular breach of planning control addressed by the notice, as a matter of fact.
4. The appellant submits that it would be sufficient to simply require the residential use to cease and remove personal effects, thus leaving the caravans and kitchen/living facilities within the buildings available for use while continuing to care for the ponies on the site.
5. The Council has not sought cessation of the equestrian use, and hence compliance with the notice would see planning permission for that use granted by virtue of sections 173(11) and 73A of the 1990 Act. There is also planning history, including planning permission for a stable building, to indicate that equestrian use has been a feature of the site for some time, and may well already be lawful. The Council appear to take this view also. For these reasons I have considered this ground on the basis that the equestrian use is likely to continue, either being lawful now or following compliance with the notice.
6. Ordinarily, cessation of a residential use and the removal from the land of all the facilities necessary to sustain that use are appropriate to remedy such a breach of planning control. When the residential use is bound up with another use, typically equestrian or agricultural, some facilities can be used in common, so something less than complete removal may be acceptable. A view can be taken on what can be considered as reasonably necessary to support the use that is not required to cease, but it would not be appropriate in my view to allow facilities to remain that would enable the use enforced against to be resumed. The basic facilities required to serve the equestrian use have not been specified. However, the site has a wc attached to the stable building, and the retention of a fridge, a cooker and a sink and one kitchen unit, all of which are present within the buildings, would suffice, in my view, to support the equestrian element. The requirements can be varied to permit this. However, I consider that relaxing the requirements so that the caravans and mobile home remained on the land would not serve to remedy the breach. By definition these are designed for human habitation. If there is a genuine necessity to provide showering facilities on the premises in connection with the equestrian use then that can be accommodated within the buildings, which already have plumbing and electricity.
7. For the reasons given above I shall vary the requirements to enable basic facilities to be retained to support the equestrian use. To go beyond that would not remedy the breach of planning control. The appeal on this ground succeeds to that limited extent.

Ground (g)

8. This ground is that that the period of time specified for compliance with the notice, 9 months, falls short of what should reasonably be allowed.
9. What is actually sought under this ground is that the compliance period be extended so as enable the appellant to continue to live at the appeal site for so long as she can. It is argued that Mrs Andrews has health problems that could be exacerbated by the stress of having to move, and that her emotional well-being depends to a large extent on being able to continue to care for her ponies and other animals. As the Council has pointed out, that would be tantamount to planning permission, albeit on a personal basis.
10. The appellant has drawn my attention to two examples where it is said that this approach has been taken. In one case planning permission was granted on appeal for the use of a mobile home by a couple for so long as they lived there, solely on the basis of personal circumstances and human rights considerations. However, that followed almost 20 years of use of the mobile home, most of that time with the benefit of temporary planning permissions, and the local planning authority had indicated that it would have granted a further temporary permission in similar terms. The other example concerns an enforcement notice whose requirements resulted in a similar outcome, but there are no further details provided so the context is not clear.
11. In this case the grounds pleaded provide no opportunity to consider the general planning considerations, but there is no doubt that the use enforced against is contrary to the development plan, which underlies protection of the environment, including the countryside, in the public interest. In my view the circumstances in which an open ended compliance period would be justified are likely to be rare and exceptional. The care of the animals in this case undoubtedly benefits from a residential presence, but in my experience many similar operations are satisfactorily managed from off-site. The appeal property is the appellant's home and the requirement to cease the unauthorised residential use amounts to interference with her rights under Article 8 of the European Convention on Human Rights, but I consider that the protection of the public interest inherent in the legitimate aims of development control cannot be achieved by means which are less interfering of the appellant's rights. In this context cessation of the unauthorised use is proportionate and necessary and hence would not result in a violation of Article 8 rights.
12. There is no requirement to cease the equestrian use of the site, so I can give little weight to the argument that an extended period is required to find alternative accommodation for the ponies. I accept that the appellant's desire to live reasonably close to the appeal property in order to continue to look after her ponies there will constrain the search area for alternative accommodation, and hence I consider that extending the period for compliance to 1 year would be reasonable in the circumstances, having regard also to possible impact on the appellant's well-being, and the ground (g) appeal succeeds to this limited extent. This is shorter than the 2 years sought in the alternative, but I have not seen any evidence about the availability of suitable properties in the locality to just such a lengthy period.

Paul Dignan

INSPECTOR