The Planning Inspectorate

Appeal Decisions

Site visit made on 15 August 2017

by Jessica Graham BA (Hons) PgDipL

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

Decision date: 30 August 2017

Appeal Refs: APP/X1118/C/16/3165537 and APP/X1118/C/16/3165538 Land known as "Honey Hill", Opposite Collard Bridge, Snapper, Barnstaple, North Devon EX32 7LA

- 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 Ms Tina Thorne (APPEAL A) and Mr Garry Braund (APPEAL B) against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 17 November 2016.
- The breach of planning control as alleged in the notice is
  1) without planning permission and within the last 4 years, unauthorised operational development on the Land consisting of the erection of three sheds and the formation of tracks and an access whose approximate positions are shown marked on the attached Location Plan; and
  2) without planning permission and within the last 10 years, unauthorised material change of use of the Land consisting of the siting and residential occupation of two caravans (namely, the touring caravan and the Dodge bus) whose approximate positions are shown marked on the attached Location Plan.
- The requirements of the notice are
  1) Close the access by restoring the land within 25 metres of a metalled part of the classified road to its condition before the development took place
  2) Remove the three sheds whose approximate positions are identified at A, C and E on the attached Location Plan from the Land shown edged red on the attached Location Plan
  3) Remove the two caravans whose approximate positions are identified at B and D on the attached Location Plan from the land shown edged red on the attached Location Plan
  4) Cease the residential occupation of the Land shown edged red on the attached Location Plan
  5) Cease the use of the Land shown edged red on the attached Location Plan for the siting of any caravan otherwise than in accordance with the Town and Country Planning (General Permitted Development)(England) Order 2015
  6) Remove all rubbish and debris created by complying with steps 2 and 3 above from the land shown edged red on the attached Location Plan.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld, with variation and corrections, in the terms set out below in the Formal Decisions.

Preliminary matters

Background

1. In October 2014 the appellants submitted a planning application for the creation of a new entrance to the land, opposite the existing junction with Collard's bridge[1]. This was refused on 11 February 2015. A further application for a new entrance in this location was submitted in October 2015, and refused on 16 December 2015[2]. In August 2016 the appellants made an application for retrospective permission for siting a bus and a caravan to provide living accommodation, and the erection of three sheds[3]. The Council issued a decision notice refusing planning permission on 11 November 2016, and on 17 November 2016 issued the enforcement notice that is the subject of these appeals.

2. The appellants submitted appeals against both the enforcement notice and the refusal of planning permission. The appeals against the enforcement notice originally included ground (a) – that is, that planning permission should be granted for what is alleged in the notice. The appellants did not at that time pay a fee in respect of the planning application deemed to have been made under ground (a), on the basis that a concurrent appeal against the refusal of planning permission was to be lodged. However, the appeal against the refusal of permission was not made within the specified period, and so was held to be invalid. The deadline for payment of the fee for the deemed planning application associated with ground (a) of the enforcement appeals having by then expired, that deemed application, and ground (a), lapsed.

3. The appeals now before me, then, proceed solely under grounds (f) and (g) of s.174(2) of the Act: I have no remit to consider the planning merits of the case.

The enforcement notice

4. The notice alleges the use of the land for the siting and residential occupation of two caravans. "Occupation" is not development as defined by s.55 of the 1990 Act, but it is clear that the Council aimed to enforce against the residential use of the land. Additionally, the requirement to cease the use of the land for the siting of any caravan otherwise than in accordance with the GPDO is not necessary, as it goes beyond what is required to remedy the breach. I intend to correct the notice by simplifying the description of the use alleged, and by aligning the requirements to address the use as alleged. I can make these corrections without causing injustice, since they would not render the notice more onerous.

The appeals on ground (f)

5. The ground of appeal is that the steps required by the notice are excessive.

6. Looking first at the residential use of the land, the appellants explain that the Dodge bus is their home and has been for some years; that both the bus and the caravan would require work to make them road worthy before they could be moved; that there would be considerable difficulty in finding an alternative

[1] Ref 58288
[2] Ref 60100
[3] Ref 61762

site on which to live; and that rather than have to do this they wish to stay on the site they have bought and paid for. These considerations are relevant to the appeals on ground (g), and I shall return to them below. However, none of them amount to, or are indicative of, lesser steps than those required by the notice. Given that the purpose of the notice is to remedy the breach of planning control that has occurred, this can only be achieved by discontinuing the residential use of the land and removing the bus and caravan that were brought on to the land to sustain it. To require that does not, therefore, exceed what is necessary.

7. Turning to the operational development that has taken place, the appellants contend that the three sheds they have built would still be required even if they were obliged to stop living at the site, since they would still work the land, and would need sheds for the storage and maintenance of materials and equipment. The appellants have put forward proposals for the future use of the land if they were to remain in residence, including beekeeping, growing vegetables and keeping hens. As set out above, in the absence of ground (a) the planning merits of these proposals are not before me, but I note that even if they amounted to the agricultural use of the land, the appeal site is less than 5 ha and so would not accrue any Permitted Development Rights[4] for the construction of agricultural buildings.

8. In the limited terms of the arguments that can be considered under ground (f), then, there is currently no convincing evidence that if the three sheds were to be removed in accordance with the requirements of the notice, they could then simply be lawfully replaced. That being the case, I find nothing excessive in the requirement to remove the three sheds. Such a requirement does not preclude the landowners from doing what they are lawfully entitled to do in the future, once the notice has been complied with.

9. As to the access, the appellants contend that to restore the land to its original condition would be unsafe and unstable, as it could potentially wash down the byway into the road. The access was created by removing a section of the bank adjacent to the road, and while the incline is steep, there is no evidence to suggest that prior to the creation of the access, the land was unstable. The works to close the access may result in some mud and debris on the highway in the short term, but once the bank was reinstated there would no longer be any potential for water, mud or other debris to wash through the access on to the byway and the road. I therefore consider it appropriate, rather than excessive, for the notice to require the reinstatement of the land to its former condition.

10. Taking all of this into account, the appeals on ground (f) fail.

The appeals on ground (g)

11. The appeal on this ground is that the period specified in the enforcement notice for compliance falls short of what should reasonably be allowed. As noted under ground (f) above, the appellants are concerned that both the bus and the caravan would require a considerable amount of work to make them road worthy before they could be moved, and that since the bus is now their home, they would struggle to find an alternative site on which they could live. They also have a lot of personal belongings stored in their three sheds.

[4] As set out in The Town and Country Planning (General Permitted Development) Order 2015

12. The Council argues that since its enforcement investigation has been ongoing since October 2015, the appellants have had ample time to find alternative accommodation and make the necessary arrangements to remove goods and structures from the land. However, having lodged a valid appeal against the enforcement notice which initially included ground (a), the appellants were entitled to assume success, and are entitled to a reasonable period for compliance after the notice takes effect.

13. The Council also points out that the physical removal of the bus, caravan and sheds could easily be achieved within a few days using a tractor and trailer, and observes that the 6 month period for compliance is consistent with other (unspecified) appeal decisions concerning mobile homes stationed on agricultural land. That may be so, but it is important to bear in mind that in this particular case, upholding the enforcement notice will result in the loss of the appellants' home and they must be given a reasonable period in which to look for alternative accommodation.

14. Of course it is also important, in the public interest, that the requirements of the notice should be carried out without undue delay to overcome the harm identified by the Council in its reasons for issuing the notice. In my judgment, a period of 9 months to cease the residential use of the land and remove the bus and the caravan would strike the appropriate balance between the competing private and public interest, such that there would not be a disproportionate burden placed on the appellants.

15. The appellants' evidence indicates that the removal and possible sale of goods stored in the three sheds will be closely linked with the arrangements to be made for finding alternative accommodation, and I saw at my site visit that it would be extremely difficult to remove the bus and caravan from the land through the original access to the site. I therefore consider it appropriate also to extend to nine months the compliance period for the requirements to close the access and remove the sheds from the land, along with the requirement to remove any rubbish and debris thus created.

16. To this limited extent, the appeals on ground (g) succeed.

Conclusions

17. For the reasons given above I conclude that the requirements of the notice are not excessive, but that a reasonable period for compliance with those requirements would be nine months. I am varying the enforcement notice accordingly, prior to upholding it with corrections. The appeals under ground (g) succeed to that extent.

Formal Decisions

18. It is directed that the enforcement notice be varied by the deletion of the term "6 months" from paragraph 5 and its substitution with the term "9 months", and corrected by:

    1) in paragraph 3, the deletion of the words "siting and residential" and their substitution with the words "residential use of the land involving the";

    2) in paragraph 6, the deletion of the word "occupation" from item (4) and its substitution with the word "use";

3) in paragraph 6, the deletion of item (5) in its entirety; and

4) in paragraph 6, the re-numbering of item (6) as item (5).

19. Subject to the variation and corrections, both Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Jessica Graham

INSPECTOR