
Appeal Decision

Site Inspection on 17 June 2019

by Graham Self MA MSc FRTPI

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

Decision date: **2nd July 2019**

Appeal Reference: APP/U1240/C/18/3215649

Site at: "Stoney Down Plantation",¹ off Rushall Lane, Corfe Mullen, Wimborne, Dorset BH21 3RS

- The appeal is made by LodgesandYurts.Com Ltd² under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by East Dorset District Council.
- The council's reference is ENF/2016/0198.
- The notice is dated 8 October 2018.
- The breach of planning control alleged in the notice is:

"In the approximate position marked with a black cross, change of use of land, to a mixed use of land for forestry and tented and motorhome camping activities and operational development to facilitate the use of land, namely the erection of a shower and toilet block (including the single external toilet) together with its respective holding tanks, fixtures and fittings, the erection of a wash station, the erection of 6 solar panels, the siting of two containers, the erection of a roofed structure to accommodate the containers within."
- The requirements of the notice are:
 - "a) Cease the use of the land affected for tented and motorhome camping activities;
 - b) Cease the use of the containers and all buildings which facilitates the use of land for tented and motorhome camping activities;
 - c) Following compliance with a) and b) above, remove the two containers and the attached roof structure from the land affected;
 - d) Following compliance with a) and b) above, demolish the shower and toilet block including the external single toilet and wash station;
 - e) Following compliance with a) and b) above, demolish the timber framed roofed wash station;
 - f) Following compliance with a) and b) above, dismantle the solar panels and its supporting frame;
 - g) Following compliance with a), b), c), d), e) and f) above, remove from the land affected all the associated materials, footings and foundations, holding tanks and respective pipes and electrically connections serving all the container, buildings and structures."
- The period for compliance is six months.
- The appeal was made on grounds (a), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the Act.

¹ See "Procedural Matters" regarding the spelling of the site address.

² See "Procedural Matters" regarding the identity of the appellant.

Summary of Decision: The enforcement notice is corrected and varied. The appeal fails and the notice as corrected and varied is upheld.

Format of this Decision

1. Before considering the grounds of appeal it is necessary to comment on some procedural matters and on the allegation in the enforcement notice. I then assess the appeal grounds in logical, rather than alphabetical, order.³

Procedural Matters

2. East Dorset District Council has evidently been dissolved following a merger of local authorities. References to the council or planning authority in this decision relate either to the former District Council or its successor, Dorset Council.
3. In the heading to this decision, I have taken the spelling "Stoney Down" from the enforcement notice, the appeal form and the statements submitted by both the appellant and the planning authority. Local residents have pointed out in written submissions that this spelling is incorrect. The spelling "Stony Down" appears on Ordnance Survey maps - indeed, the map attached to the council's enforcement notice is labelled (in very small lettering) "Stony Down Plantation" although the council's title on the map refers to "Stoney Down Plantation". For the heading above I have considered it more appropriate to use the spelling in the enforcement notice and appeal documents. I return to this matter later when dealing with corrections to the enforcement notice.
4. In the summary details at the start of this decision, I have given the appellant's name as specified in the form lodging the appeal. However, other evidence, including the company letterhead and published company information, indicates that the real appellant is a company named "Lodges & Yurts.Com Ltd" (ie with an ampersand, not the word "and", also with a space either side of the ampersand). The version using the word "and" appears to be only a website name, and a website name is not an entity having a right of appeal.
5. This discrepancy seems to stem from incorrect information supplied in response to a planning contravention notice,⁴ where the leasehold owner of the land was stated to be "Lodges and Yurts.Com Ltd".⁵ The council's statement specifies the appellant slightly differently as "LodgesandYurts.Com Ltd"; but as far as I can establish there is no such limited company. Bearing in mind that enforcement cases can sometimes lead to criminal proceedings, accuracy on such points as company names can be important. I have decided that the apparent discrepancy in this instance does not have such legal significance as to affect the validity of the appeal, but it should be noted by all involved.

³ This is because if an appeal succeeds on legal grounds (in this case an implied ground (b) and ground (c)), an enforcement notice would be quashed, so other grounds become redundant; if a ground (a) appeal succeeds, the requirements of the notice (ground (f)) then become redundant.

⁴ For those reading this decision who may not be familiar with planning law, a planning contravention notice is not an enforcement notice. It is a notice served under Section 171C of the 1990 Act, requiring information in answer to questions. The council evidently also served a requisition for information under Section 330 of the Act. It is an offence knowingly to make any false statement in response.

⁵ The company Lodges & Yurts.Com Limited was evidently incorporated in February 2015. Mr Lee Birchell is a Director. Mr Birchell's signature to the letter sent to the planning authority with the PCN response is followed by the name "Lodges and Yurts.Com", but the company letterhead at the top of this same letter reads: "Lodges & Yurts.Com".

The Allegation

6. The allegation in the enforcement notice as drafted by the planning authority is flawed. It describes (in part): "In the approximate position marked with a black cross, change of use of land to a mixed use....." etc. That is wrong because the planning unit in this case⁶ is the whole of the site edged with a thick line on the enforcement notice plan, and the mixed use alleged applies to this whole area, not just the area marked with a cross. This point has not caused any misunderstanding by the appellant or anybody else and I am satisfied that I can use the powers of correction available to me under Section 176 of the Act to amend the allegation without injustice to any party.
7. This enforcement notice is directed at two different types of development as defined in Section 55 of the 1990 Act. One is making a material change of use of land; the other is carrying out "operational development" (the erection of buildings or structures). Combining these different types of development into one enforcement notice is normally best avoided because it causes complications, though the High Court has held that it is legally valid to do so.⁷ In considering the grounds of appeal, it is necessary to refer to both "change of use" and "operations".

Implied Ground (b)

8. One of the appellant's arguments under ground (f) of the appeal is that on the day the enforcement notice was issued, no camping activity was happening. This argument more appropriately relates to ground (b) of Section 174(2), which has not been pleaded,⁸ but I consider it here, because it is potentially relevant to ground (b) rather than ground (f).
9. The presence of structures on the site which are clearly intended to remain all year round, together with other operational development which is integral to and facilitates the camping use, is significant. By "other operational development" I mean the earthworks which have been carried out to create 13 pitches for motor-homes and tents or yurts. The sloping part of the site near the buildings has been subject to cut-and-fill levelling operations. Even on the more level part of the site where the pitches apparently intended for motor-homes are located, the ground surface has been scraped away and heaped to make the pitches level. As far as I can tell from the available evidence, these operations have not been the subject of any planning permission and are unauthorised. The effect has been to make the pitches unsuitable for forestry - it is inconceivable that the areas subject to cut-and-fill could in practice be used for planting trees or returned temporarily to some other forestry use when no tents were in position on them.
10. For the purposes of planning law, a use of land does not stop merely because an activity stops. To take a simple example, when occupiers of a house go away on holiday, the residential use of their home does not cease. Because of what are clearly intended to be permanent (not mobile) structures and permanent earthworks as mentioned above, the camping component of the mixed use is either permanent or at least "permanently intermittent" (seasonal). Either way, the fact that no camping activity was actually happening on 8 October 2018 does

⁶ For legal reasons the term "planning unit" has a specific meaning. It normally (but not always) refers to the unit of occupation.

⁷ The main complication which can arise concerns the "immunity" period, though fortunately that issue does not arise in this instance. The court judgment I refer to here is *Valentina of London Ltd v Secretary of State for the Environment*, The Times May 21 1992.

⁸ Ground (b) is a claim that the matters alleged in the enforcement notice have not occurred.

not invalidate the enforcement notice or mean that the change of use enforced against had not occurred, or that it had ceased. There is no merit in the appellant's argument on this point, and if ground (b) of Section 174(2) had been pleaded it would have failed.

Ground (c)

11. Under ground (c) of Section 174(2) it is claimed that the matters alleged in the notice do not constitute a breach of planning control. I consider first the "change of use" part of the allegation. The appellant says that the main issue to be considered is whether the temporary use of the land for camping purposes for up to 28 days a year requires planning permission. The appellant then states that the use has been limited to no more than 60 days a year, and as a starting point for the appeal, the camping use if limited to 28 days per year would be "permitted development" under the GPDO⁹; therefore the appellant believes that the principle of camping use if limited to 28 days is not something the council can enforce against.
12. The appellant's argument is muddled. The main issue is not concerned with a 28-day use for camping: it is concerned with whether the mixed use enforced against is authorised. There is no planning permission, either specific or through the GPDO, for the mixed use alleged by the council. The appellant accepts that the use has been carried on for more than 28 days a year. Indeed, the appellant has accepted that the mixed use "does require planning permission".¹⁰ Moreover, the appellant company and its adviser seem to have assumed that the use of the buildings for camping-related purposes is permitted for 28 days a year. That is not so. The buildings on the site (including the structure housing the containers, the roofed washbasin structure and the building providing showers and toilets) are part and parcel of the disputed use and are not covered by the 28-day temporary use permission under the GPDO.¹¹
13. As regards the operational development of erecting the buildings, much of the appellant's case concerns the "prior approval" procedures under Class E of Part 6 of the GPDO. In 2016 the council issued letters following applications under those procedures seeking a determination as to whether the prior approval of the authority would be required for the siting, design and external appearance of proposed buildings. The letters confirmed that the council had failed to respond to the applications within the 28-day period allowed by the legislation and stated in both cases that the development specified in the application "is now authorised and lawful in planning terms". The council now say that what the council did was "incorrect in its approach".
14. This aspect of the appellant's case seems to be in effect a claim of "estoppel". I have also considered whether the developer had what the courts have termed a "legitimate expectation" in place of the concept of estoppel. I do not propose to go into the full legal history of estoppel here, but in brief, this is an aspect of planning law which has changed over the last 20 years or so, and the courts have held that a planning authority is not bound by the actions of its officers. In any

⁹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

¹⁰ Appellant's statement, paragraph 9.2.

¹¹ Part of the definition of development in Section 55 of the 1990 Act refers to the material change of use of land. Under Section 336 of the Act, "land" includes a building. The provisions for temporary use of land for 28 days are in Class B of Part 4 of Schedule 2 of the GPDO; but paragraph B.1(b) provides that the 28-day permission does not apply where the land in question is a building.

case, the so-called "decision" issued by the planning authority was out of time, as it was not issued within the 28-day limit. The fact that the council failed to respond to the applications within 28 days does not automatically mean that the development now subject to enforcement was authorised.

15. There are other reasons why the structures are unauthorised. First, I simply do not believe that the shower and toilet block, the washbasins and waste holding tank were constructed for forestry workers. The facilities provided go far beyond what would be normal or reasonably necessary for use by temporary workers, both in overall design and in details such as the digital security locks on the doors of the shower rooms as well as a similar lock on the outer door.
16. On this point I note that in the council's planning contravention notice, one of the questions was: "Why are the numbered doors inside the building each equipped with a digital lock, when the entrance door to the building is equipped with a digital lock? Mr Burchell on the appellant's behalf wrote: "To allow personal possessions to be stored by workers whilst working on site". This explanation does not ring true. I find it difficult to believe that forestry workers (who would almost certainly travel to and from the site in vehicles) would want or need to store possessions in the shower rooms and toilets. The appellant has not tried to claim that the room numbers were not in place from the start, and this feature also suggests to me that the building was intended for use by paying customers.
17. Second, the appellant has not disputed that the solar panel array was unauthorised at the time the enforcement notice was issued. As I saw during my inspection, the panel has been altered recently, but that does not affect the fact that it was unauthorised at the relevant time.
18. Third, the main building on the site - the shower and toilet block - has not been built in accordance with the plans submitted in connection with the prior approval procedure. The size and shape of the building is different - the roof is hipped instead of gabled and there is a lean-to shaped part about 0.75 metres wide housing various tanks and other items, which is not shown on the application drawings. There is also a separate toilet (labelled as ladies' and gents' toilets) in an attached structure, again not shown on the drawings. Including this attached part, the building is around 16% longer than depicted on the application drawings.¹² The interior layout of the building is also materially different - there are six shower/toilet rooms instead of the three shown on the drawings, and the building was apparently constructed with this layout from the start.
19. Taken individually, perhaps for example looking at just the roof shape on its own, these departures from the plans might not be material; but in combination, they are. Where a building operation which requires planning permission is not carried out, both externally and internally, fully in accordance with the permission, the whole operation is unlawful.¹³ The fact that significant parts of the development are unauthorised makes the whole development unauthorised.
20. The appellant's claims about the original purpose of the buildings being for

¹² I have had to allow here for the scale of the A1 size paper copies of the drawings apparently having been affected by reproduction.

¹³ This is paraphrased from the House of Lords judgment in *Sage v Secretary of State for Environment, Transport & Regions and Maidstone BC* [2003] UKHL 22. It followed much the same line as the earlier court judgment in *Copeland BC v Secretary of State for the Environment* [1976] JPL 304, where a house was built with the wrong type of roof tiles, so the whole house was unauthorised.

forestry are also undermined by the fact that in April 2015 (before the disputed development was carried out) in an application to Wessex Water relating to water supply, the description of "works to be carried out" was stated to be "to provide water for recreational use, including a visitor centre, a small café and toilet facilities". "Forestry" was described in this application as the historical land use, and the proposed use was described as "recreation". In a list of proposed water-related appliances including showers and toilets, the word "camping" was entered against each item, clearly indicating the proposed purpose of installing all these facilities. Forestry was not mentioned as a proposed use or activity.¹⁴

21. In summary I find that the facilities provided at the site were not, and are not, reasonably necessary for the purposes of forestry.¹⁵ I also have doubts about the veracity of other evidence submitted by the appellant, including the claim that camping has only happened for up to 60 days a year. A local resident who writes that he walks his dog on Stony Down Plantation daily states that in 2016, tents were first erected on 15 July and were removed on 27 October (a total elapsed time of over 100 days), and that he recorded at least 89 days' presence of tents or motor caravans on his calendar. The tents may not have been occupied for all of this period but as I have already explained, periods of non-occupation do not mean that for planning purposes a use of land ceases. In this type of written appeal when I cannot cross-examine witnesses it is difficult to determine whose evidence is the more accurate; but whatever the precise number of days, the evidence suggests to me that the extent of camping use has been greater than the appellant has made out.
22. I comment in passing that I am well used to carrying out site inspections for enforcement appeals when what can be seen on the site may not be typical or normal. At the time of my inspection various objects including estate agent's "for sale" signs were placed behind the containers in a fenced area which was not easy to reach or see, giving the impression that the site had recently been tidied and non-forestry-related items put out of ready sight.
23. Some of the council's legal arguments are not well explained in the council's statement or are flawed (for example, the claim that the appeal on ground (c) is a nullity - this is a misuse of the term "nullity"). Nevertheless, the council's case is basically sound.
24. In summary, both the material change of use to the mixed use alleged in the enforcement notice and the operational development alleged in the notice are unauthorised and constitute a breach of planning control. Therefore ground (c) of the appeal does not succeed.

Ground (a)

25. Under this ground, planning permission is sought for the development enforced against. The main issues are the effect of the development on the rural character of the area, having regard to the location of the site in the East Dorset Green Belt, and to the possible ecological impact. These issues have to be considered in the light of relevant planning policies.
26. On the first issue, it is necessary to consider whether the development is "inappropriate" for the purpose of green belt policy, and if so, whether the harm by reason of inappropriateness or any other harm is outweighed by other factors.

¹⁴ The evidence about the water supply application was submitted by a local resident.

¹⁵ The words "reasonably necessary" are important because of the terms of Class E of Part 6 of Schedule 2 of the GPDO.

The buildings and the mixed use are linked with each other, so I am looking here at the development as a whole.

27. Under national policy, the construction of new buildings in green belts is "inappropriate", subject to certain exceptions. An exception which could be of potential relevance here is the construction of buildings for forestry. Changes of use for outdoor sport or recreation are also "not inappropriate" in the green belt provided they preserve its openness and do not conflict with the purposes of including land within the green belt. However, the development in this case does not come within one of the exceptions to normal green belt policy, because as discussed above, the buildings were not constructed for the purpose of forestry, and the development as a whole (including the change of use involving the presence of buildings, yurts and camper-vans) does not preserve the openness of this part of the green belt. The fact that the site is well-wooded does not affect the concept of openness - buildings, yurts and parked vehicles are essentially urban or man-made features in the countryside.
28. The local plan for this area provides (in summary) that sites for caravans or tents for holiday use will not be permitted within the green belt. The development conflicts with the aims of this policy, one of which is to prevent encroachment into the countryside. The development is also harms the rural character of the area and is contrary to policies HE2 and HE3 of the 2014 Core Strategy.
29. I do not accept the appellant's argument that the development at issue here is "the change of use to include an ancillary element of use by campers for part of the year". The appellant's attempt to hang its case on the hook of a mere ancillary use is misguided for at least two reasons - the fact that permanent buildings are there to facilitate the camping use makes it more than ancillary, and the scale of the camping use is anyway not subservient or minor in comparison with forestry use.
30. Inappropriate development is by definition harmful to the green belt and can only be permitted in very special circumstances. I can see some beneficial aspects of the development, such as generation of employment, a positive impact on the local economy, and the social benefits of outdoor recreation. In my judgment such factors are not very special, and do not justify making an exception to normal green belt policy. Nor would the benefits of the scheme make it "sustainable development" as argued for the appellant.
31. As regards ecological matters, the appeal site is within 400 metres of Corfe Mullen Pastures and the Dorset Heathlands "Ramsar" site. The former is a Site of Special Scientific Interest and part of the Dorset Heaths Special Area of Conservation, being heathland designated as of European importance. National and local planning policies aim to prevent harm to such designated sites from nearby residential development, and for this purpose self-catering camper-van or camping accommodation, even if temporary, counts as residential development. The main types of harm which could arise from human activity are increased fire risk, loss of vegetation, soil erosion and disturbance from humans and pets. Given the presence of a public bridleway through the site helping access to a wider area, there is a real risk of such harm to nature conservation interests.
32. Turning to other matters, the South Dorset Pitchers Camping Club evidently obtained an exemption certificate under legislation dating from 1936 enabling the club to hold "exempted rallies" of its members, subject to various restrictions. The certificate copy supplied in the appellant's evidence was issued by the Welsh Ministers and only applies in Wales; other evidence refers to an exemption certificate issued by Natural England subject to a maximum of five days on site;

but anyway in my judgment this aspect of the appellant's case is a red herring. The publicity for the site, including online advertising, indicates a business operation aimed at the general public. If enrolment into a club has been part of the booking arrangement, it is an artifice. It may have provided a way round some legislation, but does not have weight in my assessment of planning merits. Moreover, the SDPCC certification was evidently withdrawn in October 2018.

33. An additional point regarding the "camping club" is that the appellant's argument is based on Class C of Part 4 of Schedule 2 of the GPDO, which refers to the use of land by members of certain recreational organisations. A restriction applies here (similar to the restriction on temporary uses mentioned in paragraph 12 and footnote 11 above): development is not permitted by Class C of Part 4 if the land is a building,¹⁶ and since the buildings on the site are integral to the camping use, Class C does not provide the permission for club members suggested by the appellant, even ignoring the issues about club membership and certification.
34. Part of the appellant's case is that if the whole land-holding were to be used for 28 days per year for camping, there could be, say, 100 tents on the site for 28 days, or 2,800 "camping nights", compared with only 780 "camping nights" if the 13 pitches were used for the 60 day period sought. In my judgment the well-wooded, irregular topography of most of the site makes the appellant's reference to the capacity of the site hypothetical and artificial, especially bearing in mind that planning permission would probably be needed for the sort of levelling operations likely to be necessary to create any more pitches.
35. The appellant's submissions about temporary use are also conflicting and misguided. Paragraph 9.2 of the appellant's statement refers to permission for up to 88 days camping use (60 plus 28 which the appellant believes to be permitted by the GPDO); whereas paragraph 1.3 of the statement refers to up to 60 days (60 *including* 28 arising from the appellant's belief about GPDO rights). These statements appear to be based on a misunderstanding of the law about temporary use rights and do not take account of the physical changes to the land I have mentioned in paragraph 9 above and the presence of permanent buildings. Be that as it may, I have considered the possibility of imposing conditions on a planning permission, including controlling the number of days camping could take place. I judge that conditions would not make the development acceptable.
36. My overall conclusion in the light of all those considerations is that planning permission should not be granted, primarily because the development harms the rural quality of the area, detracts from the openness of the green belt and is likely to harm important nature conservation interests, all contrary to national and local planning policies. Therefore, the appeal on ground (a) fails.

Ground (f)

37. This ground of appeal concerns the requirements of the enforcement notice. The appellant contends that the only action necessary to remedy the breach of planning control is to cease the use of the buildings by campers and reduce the camping use to 28 days a year. Reducing the size of the solar panels to bring them within so-called "permitted development" limits (already carried out before my site inspection) would also in the appellant's view be sufficient for this item.
38. The appellant's case on ground (f) largely depends on the assertion that the buildings were built for forestry purposes and only subsequently became partly used by campers. I have found against this claim. The labelling of gents and

¹⁶ See paragraph C.1 of Class C of Part 4 of Schedule 2 of the GPDO.

ladies toilets, the lockable doors, the nature and quality of the fittings, the statements made to the water company, all indicate that the buildings were built at least primarily, if not solely, for use by customers of the camping business. Added to that is the unauthorised status of the main building because of its departures from submitted plans, and the appellant's acceptance that the solar unit was unauthorised. Operations which facilitate and are integral to an unauthorised change of use can be included in the requirements of an enforcement notice directed at a change of use, even if the operations might otherwise not be liable to enforcement.¹⁷

39. The mixed use enforced against is unauthorised. I have found that the buildings were erected primarily or solely to support the camping component of the mixed use, and their erection was also unauthorised. The requirements of the enforcement notice are directed at the camping component of the mixed use and the buildings which facilitate it. The presence of permanent buildings and the physical changes to the land which inhibit forestry use of the pitches and are integral to the unauthorised camping use do not equate to a 28-day temporary use. In these circumstances I do not see good reason to amend the notice to make it "under-enforce" in the way sought by the appellant.
40. I conclude that the requirements to cease the use and undo the operations as specified in the enforcement notice are not excessive or unreasonable. Therefore, the appeal on ground (f) fails.

Other Matters

41. A small part of the site as defined in the council's plan attached to the enforcement notice has evidently been sold off and is not leased by the appellant company. The area involved is on the northern fringe of the site and is not affected by any of the requirements of the notice. I do not know exactly when the change of ownership or occupation occurred, and I have decided that this is a minor discrepancy which can be ignored for the purposes of this appeal.
42. A written Counsel's opinion was submitted in support of the appellant's case. I have noted the views expressed. The opinion, which contains a number of factual errors or misunderstandings and was evidently completed nearly three years ago, has not affected my decision.
43. There are some errors of English in the enforcement notice ("solar panels and its"; and "electrically connections"). As I am amending the notice so that it refers to "Stony Down" I shall take the opportunity to make suitable grammatical corrections as well.

¹⁷ The two most well-known standard judgments on this point are *Murfitt v SSE and East Cambridgeshire DC* [1980] JPL 598 (which involved surfacing which would normally have been immune from enforcement) and *Somak Travel v SSE* [1987] JPL 630 (where an enforcement notice required the removal of an internal staircase which did not require planning permission).

Formal Decision

44. I direct that the enforcement notice be corrected and varied in the following ways:
- (i) by deleting the word "Stoney" from the text under the heading "The Land to which the Notice Relates" and from the Enforcement Notice plan and substituting "Stony" in both places.
 - (ii) by deleting from the allegation the words "In the approximate position marked with a black cross, change of use of land" and substituting: "Making a material change of use of the land".
 - (iii) by inserting a comma instead of the full stop after the word "within" at the end of the allegation and adding after the comma: "these items of operational development being in the approximate position marked with a black cross on the plan accompanying this notice."
 - (iv) by deleting from sub-paragraph (f) of the requirements the words "solar panels and its" and substituting: "solar panel structure and its".
 - (v) by deleting from sub-paragraph (g) of the requirements the word "electrically" and substituting: "electrical".
45. Subject to those corrections and variations, I dismiss the appeal, uphold the notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector