



Appeal Decisions

Site visit made on 30 April 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 19 July 2019

Appeal A: ref. APP/V2635/C/18/3202136

18 Beach Road, Snettisham, King's Lynn PE31 7RA

- 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 by George Deverick against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice, ref. 18/00008/UNAUTU, was issued on 21 March 2018.
- The breach of planning control alleged in the notice is the material change of use of countryside land to garden land including the stationing of residential paraphernalia and the construction of a pond, timber arch, and outbuildings.
- The requirements of the notice are to ensure that:
 - i) The use of the land as garden land, a pond, and stationing of residential paraphernalia including the timber arch and outbuildings permanently ceases.
 - ii) All residential paraphernalia including the pond, timber arch and outbuildings are permanently removed from the land.
 - iii) The land is restored to its former condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), & (f) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, so the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Summary of decision: the appeal is dismissed, and the enforcement notice upheld.

Appeal B: ref. APP/V2635/W/18/3219706

18 Beach Road, Snettisham, King's Lynn PE31 7RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is by George Deverick against the decision of King's Lynn & West Norfolk borough Council.
- The application ref. 18/01456/F, dated 1 August 2018, was refused by notice dated 10 August 2018.
- The application was a resubmission seeking planning permission for variation of condition 2 of planning permission ref. 13/00020/F to vary previously approved drawings at 18 Beach Road, Snettisham PE31 7RA without complying with a condition attached to planning permission ref. 14/00492/F, dated 29 May 2014.
- The condition in dispute is no. 4 which states that:

Occupation of the dwelling hereby permitted is limited to between 1 April and 30 September in any one year.

- The reason given for the condition is:

To reduce the risks associated with flooding in accordance with the NPPF.

Summary of decision: the appeal is dismissed.

Preliminary matters

1. The two appeals relate to land and buildings within the single ownership of the appellant. However, the issues in the two cases are entirely separate, and I have therefore treated them accordingly. I deal with Appeal A first, and then Appeal B.

APPEAL A

Decision

2. Appeal A: ref. APP/V2635/C/18/3202136

3. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background matters

4. The land owned by the appellant is some 160 metres from north to south and about 40 metres wide. At the northern end a new house has been built in replacement of a previous dwelling, and subsequent to the grant of planning permission in 2013¹. The land enforced against comprises the southern end of the site and is approximately three-quarters of the total area.
5. In April 2014 a further planning permission was granted for variation of the originally approved plans².

The enforcement notice

6. The appellant argues that the plan attached to the notice is not to scale and does not show a north point. He claims that on the assumption the scale is 1:2500, the plan shows the wrong site dimensions as compared with the 1:1250 plan he has provided. It therefore indicates the site as larger than it actually is, and implies the notice covers land outside the appellant's ownership and control.
7. However, a brief inspection shows that the enforcement notice plan is not at the assumed scale of 1:2500. It is quite reasonably noted on that plan that it is not to scale – presumably to prevent such erroneous comparisons.
8. As to the lack of a north point on the enforcement notice plan, the appellant must be quite aware of the orientation of his site, and indeed provides a plan showing this. Furthermore, the western, eastern and southern site boundaries are readily apparent on the site. The northern boundary has been defined by virtue of the application plan in the 2013 planning permission.

¹ Decision notice ref. 13/00020/F dated 9 April 2013.

² Decision notice ref. 14/00492/F dated 3 April 2014.

9. The enforcement notice plan is principally for identification purposes, and I consider it can readily be seen which piece of land the notice relates to. Overall, I do not consider the notice to be defective in the respects claimed.

Appeal A on ground (b)

10. Ground (b) is that the alleged breach has not occurred as a matter of fact. In appeals on this ground – known as a ‘legal ground’ – the burden of proof is on the appellant to show that on the balance of probabilities the alleged breach has not occurred as a matter of fact.
11. The appellant’s argument is on the basis that there has not been any material change of use, and that what has occurred should be regarded as development permitted development.
12. It is argued that while the pond has been created, and it is recognised as operational development, it is part of an overall scheme for which planning permission is not required – that is, there has been no material change of use from being what is claimed as being a habitat for wildlife. It has merely been made more attractive and better managed by introduction of incentives for animals and birds to use the land.
13. The principal question that arises in assessing if a material change of use has taken place is whether there has been a material change in the character of the land as between its present and former conditions.
14. The works include the construction of a pond, timber arch, and outbuildings. The pond is of considerable size and includes a small island with a rustic bridge. The timber arch is at the entrance to the piece of land enforced against – I estimated very roughly 10 metres beyond the back of the new house. It is a quite elaborate timber construction of sufficient height to walk beneath. The outbuildings comprise 2 sheds near the south-western corner of the appeal site, and a glasshouse frame (with no glass) next to a fruit cage near the south-eastern corner of the site.
15. The appellant accepts that the pond should be regarded as operational development. In my view both the timber arch, and the sheds are of permanent and substantial construction requiring works by builders, as well as construction of some form of foundation. I also consider the rustic bridge comes within this category. These elements are building operations, and also must be regarded as operational development. On the balance of probabilities I consider operational development has occurred as a matter of fact.
16. As noted above it is claimed that the operational development is part of an overall scheme for which planning permission is not required. This is on the basis that the informal arrangement of the area enforced against resembles a countryside situation and location.
17. Aerial photographs of the land from 2009 and 2011 indicate a mown area of roughly the same size and position as the red line area on the planning application drawings. Beyond the mown area, corresponding closely to the area enforced against, the land appears more or less covered in scrubby growth and trees, merging with similar land to the south and west of the bungalow development bordering the western side of the appeal site. Although the site enforced against may not have been formally enclosed on its northern edge, the distinction between the scrubland and the mown garden area seen in the

aerial photographs is clear. Furthermore, the appellant states that compliance with the enforcement notice would leave the land to 'return to its previous state of neglect' – which suggests that it had not been domestic garden land when he bought the site.

18. On my visit I saw the pond, the rustic bridge, the decorative arch and flower beds, a garden seat, a tiered ornamental planter, ornamental trees, a bird table, and a stone seat among the various items of domestic paraphernalia that have been introduced. Together with the removal of vegetation, well mown grass and cultivated plants, the skeletal glasshouse and fruit cages, and the operational development identified above, the character of the land has been significantly changed from its previous undeveloped state.
19. I do not consider the state of the land resembles countryside, but that the operational development, introduction of domestic paraphernalia, and planting have changed the character from that of uncultivated scrubland to that of residential garden land. On the balance of probabilities I consider the alleged material change of use has occurred as a matter of fact. The appeal on ground (b) therefore fails.

Appeal A on ground (c)

20. Ground (c) is that there has not been a breach of planning control. Again, the burden of proof is on the appellant to show that on the balance of probability this is the case.
21. It is claimed by the appellant that the land is within the curtilage of the dwelling and has been garden land for many years. Under s.55(2)(d) of the Act it could therefore be used for a purpose incidental to the enjoyment of the dwellinghouse as such, and it would be not be taken to involve development. In this context I take 'curtilage' to have its ordinary meaning of 'a small court, yard, or piece of ground attached to a dwellinghouse, and forming one enclosure with it'³, and that it is enough that the land serves the purpose of a dwelling in some reasonably necessary or useful manner.
22. The Council were clearly concerned about definition of the domestic curtilage, as recognised in Condition 13 of the 2013 planning permission (Condition 12 of 2014 planning permission) requiring approval of details of the southern site boundary. This was imposed in order to define the boundary between the residential site and other land in the appellant's ownership. The condition was not complied with, nor did the appellant comply with the Breach of Condition Notice (BOCN) issued in 2018⁴.
23. The application drawing no. S334/11/1B shows the site for the new house outlined in red in both the full planning permission of 2013, and the permission for variation of plans in 2014. The same site is shown as that of the previously existing dwelling. These all show a southern boundary a few metres from the back of the proposed house. The remainder of the land in the appellant's ownership is not identified as such in the conventional way of a blue outline, or any other way.
24. In my opinion there is no evident way in which the land enforced against is realistically attached to the dwellinghouse or forms a single enclosure. On the

³ Definition from the Shorter Oxford English Dictionary.

⁴ BOCN re. 16/00506/BOC dated 21 March 2018.

contrary, it appeared to be a quite separate area before the change of use occurred. Furthermore, I do not consider this piece served the dwelling in any reasonably necessary or useful manner.

25. The appellant claims that the operational development is part of a scheme that does not require planning permission. However, I am not aware of any provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 that permit changes of use of an area of countryside to domestic garden use, nor has the appellant suggested any provisions that might apply. In terms of s.55(2)(d) the change of use of the appeal site should be regarded as development for which planning permission is required.
26. The development as garden land is not permitted development, and no planning permission has been obtained. On the balance of probability the appeal on ground (c) must also fail.

Appeal A on ground (a) and the deemed planning application

27. This ground is that planning permission should be granted for the matters alleged in the enforcement notice.
28. From my inspection of the appeal site and all that I have read, I consider the main issue to be the effect of the development on countryside interests in the light of development plan policy and relevant government advice.
29. Policy CS06 of the King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy of 2011 (the Core Strategy), relates to rural areas. It includes aims to maintain local character and to protect the countryside for its intrinsic character and beauty. Furthermore, the development of greenfield sites should be resisted unless essential for agricultural or forestry needs. Policy DM2 of the Council's Site Allocations and Development Management Policies Plan of 2016 (the DMP Plan) concerns development boundaries, and states that development will be permitted in areas within development boundaries defined in the Policies Map. Areas outside those boundaries will be treated as countryside where new development will be more restricted and limited to that identified as suitable in rural areas.
30. In this case the appeal site is well outside the development boundary of Snettisham and is therefore regarded as countryside by definition. Paragraph 170 of the National Planning Policy Framework advises that planning decisions should contribute to and enhance the natural and local environment by, amongst other things recognising the intrinsic character and beauty of the countryside.
31. The appeal site lies within a predominantly flat coastal landscape of large open fields, many of which are bounded by ditches. The land is in various uses but appears mainly to be arable or rough pasture. The mown grass and domestic features of the appeal site present an appearance of quite different and incongruous character. Although the appeal site is concealed to some extent by trees and shrubby growth on the southern and eastern boundaries, this is much the same as for other fields nearby and does not render the site unnoticeable or justify the change that has occurred in terms of recognising the intrinsic character of the countryside.
32. The fact that the overall appeal site boundaries are defined by ditches and fences, and that the bungalow development to the east extends further into the

countryside than the site of the new house does not preclude this piece of land from being a part of the countryside. Its development as garden land has the effect of extending the developed area still further, and effectively changing the character from rural undeveloped land to a residential garden.

33. The appellant claims to have created a natural habitat that attracts numerous species of animals and birds. While this may be the case to some extent, there is little to show that the former 'wild' condition of the land – which I understand included a small pond – did not make such a contribution in itself. Furthermore, the land is clearly in use for leisure purposes and cannot be realistically described as a nature reserve.
34. Overall, I consider the development causes significant harm to countryside interests in the light of development plan policy and relevant government advice. The development does not accord with the development plan, particularly in terms of Core Strategy Policy CS06, and DMP Plan Policy DM2. The appeal on ground (a) therefore fails, and I shall refuse permission on the deemed planning application.

Appeal A on ground (f)

35. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections. The appellant suggests that removal of the decorative arch and the glasshouse frame would be sufficient. While these elements contribute to the domestic appearance of the site, it is the overall domestic use and character of the land that causes the harm. Removal of these items would not, as a matter of fact and degree, significantly alter this situation or ensure return of the land to its rural state. The appeal on ground (f) therefore fails.

Other matters

36. The appellant claims the appeal site has been used as garden land since as long as 60 years ago. If this were the case, and the use had been continuous, it might be that the use has become immune from enforcement action, and a ground (d) appeal might have been brought. However, little has been put forward other than hearsay, and there is no evidence of any significance to support the claim. In an appeal on ground (d) it is expected that the evidence should be precise and unambiguous, which is far from the case. Had an appeal been made on this ground, on the balance of probability it would have failed.

Conclusions

37. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

APPEAL B

38. Appeal B: ref. APP/V2635/W/18/3219706

The appeal is dismissed.

Background matters

39. In April 2013 planning permission was granted, subject to conditions, for demolition of an existing dwelling, construction of a replacement dwelling and continued siting of a caravan for use as a site building⁵. The house was completed in 2014. Condition 5 of the permission stated:

Occupation of the dwelling hereby permitted is limited to between 1 April and 30 September in any one year.

The reason given for the condition was:

To reduce the risks associated with flooding in accordance with the NPPF.

40. A subsequent application to vary the approved drawings listed in the 2013 permission was approved in May 2014⁶. The conditions attached to this permission carried over the relevant conditions of the 2013 permission. Condition 4 of this second permission, and the reason for its imposition are identical to Condition 5 of the first permission. This appeal is against the Council's decision to refuse the application for planning permission to allow occupation of the dwelling without compliance with this condition.
41. I note that an appeal against refusal of a previous application to set aside Condition 4⁷ was dismissed in March 2018. The appellant has made a second application to the Council and brought a second appeal because he was dissatisfied with the previous appeal decision⁸.

Reasoning

42. In the light of continued natural change to the coastline, the deepening challenges to the financial and practical feasibility of maintaining current coastal flood defences, and the increased dangers associated with climate change, the Council have adopted DMP Policy DM18, which identifies a Coastal Flood Risk Hazard Zone (Hunstanton to Dersingham), within which the appeal site lies. I refer to this as the 'Hazard Zone'.
43. Within the Hazard Zone there are various restrictions on development, including that replacement dwellings should only be occupied between 1 April and 30 September in any one year. Furthermore, the policy aims to ensure that applications to remove, relax or vary (by way of extension) any existing seasonal occupancy condition will be resisted.
44. In the light of the above, and from all that I have seen and read, I consider the main issue in the appeal to be whether continued imposition of Condition 4 is necessary and reasonable taking into account precautions taken by the appellant, and effects on present and future occupants of the dwelling in terms of their health and safety.

⁵ Decision notice ref. 13/00020/F dated 9 April 2013.

⁶ Decision notice ref. 14/00492/F dated 3 April 2014.

⁷ Decision notice ref. 17/01464/F dated 17 October 2017.

⁸ Appeal decision ref. APP/V2635/W/17/3191121, dated 13 March 2018.

45. In the approach taken to formulation of Policy DM18 it is noted that the Wash Shoreline Management Plan of 2010 identified that coastal development is likely to be exposed to a much higher risk of flooding within 10 to 15 years, but possibly sooner. Furthermore, the policy approach states that this section of coastline is considered to be at very high risk with only a 1 in 50-year standard of protection – that is, a 2% annual probability.
46. I note that government's Planning Practice Guidance (PPG) includes the advice that when considering safety, specific local circumstances need to be taken into account, including the safety of people within a building if it floods, including people who are less mobile or who have a physical impairment. This includes the ability of residents and users to safely access and exit a building during a 'design flood' and to evacuate before an extreme flood. In a 'design flood' the required standard of protection from tidal flood risk is 1 in 200 years (a 0.5% annual probability)⁹. I consider this illustrates the relatively high probability of a serious flood event in the Hazard Zone. The policy approach further states that the Council concluded that the only safe period of occupancy within the Hazard Zone is between 1 April and 30 September each year.
47. The appellant argues that the house has been built to withstand a tidal surge of 2 metres, that all habitable accommodation is on the first floor, or on the mezzanine above that, and that he has the means to be self-sufficient for 7 days in the event of a flooding event, so would not need to be rescued. These are clearly matters of considerable importance for the structural integrity of the dwelling, and for the appellant's personal circumstances. However, they would not necessarily protect the safety of other or future occupants who may be less mobile, who may have a physical impairment, or be less able to sustain themselves for several days without assistance.
48. In addition, the appellant's other objections to the 2018 appeal decision are essentially that the original bungalow on the site could be occupied all-year-round despite being within Flood Zone 3, and that building was not fit for purpose due to the presence of asbestos. He considers there has been an undue emphasis on planning policy, rather than taking practical account of the measures he has taken in building a house of a high standard and to mitigate flood risk.
49. The appellant suggests that the original bungalow was an asbestos clad pre-fabricated building constructed before 1939, which I presume was the original bungalow. It is unlikely that concerns about coastal flooding were as pressing at that time as they have clearly become, it would probably have been unnecessary to impose limitations on occupancy, and there would have been none on dwellings of such long standing. The presence of asbestos does not justify the omission of the occupancy condition.
50. I am aware that extensive flood defences were built subsequent to the catastrophic flooding in 1953. However, there is now concern that it may not be possible to maintain flood defences. It is also recognised that the anticipated increased dangers associated with climate change mean that managing coastal flood risk is one of the key challenges for the Borough. In the light of these factors it appears to me of great importance that there should be proper regard to policy aims such as limitations of occupancy for replacement

⁹ Paragraphs 54 and 55 of PPG Section 'Flood Risk and Coastal Change' – reference IDs 7-054-20150415 and 7-055-20140306.

dwellings. The historic existence of other dwellings with permanent occupancy rights does not reduce that importance.

51. Paragraph 163 of the National Planning Policy Framework advises that development should only be allowed in areas at risk of flooding where it can be demonstrated, amongst other things, that any residual risk can be safely managed. In my view the clear purpose of the Policy DM18 restriction on occupancy is to manage such residual risk safely.
52. I also appreciate that other dwellings in the neighbourhood may have all-year-round occupancy, and that some are closer to the sea or are at a lower level than the appeal property. However, of the examples before me, some have historic approvals or have been altered/extended in ways that improve flood safety, others have been granted Lawful Development Certificates as a result of gaining immunity from enforcement action. However, this case concerns a recently built replacement dwelling, which falls squarely for consideration under the aims of Policy DM18.
53. I conclude on the main issue that the continued imposition of Condition 4 is necessary and reasonable taking into account precautions taken by the appellant, and effects on present and future occupants of the dwelling in terms of their health and safety. The proposal would not accord with the development plan, in particular with regard to DMP Policy DM18.

Conclusions

54. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

Stephen Brown

INSPECTOR