



Appeal Decisions

Hearing Held on 4 July 2019

Site visit made on 4 July 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Refs: APP/M9496/C/17/3189366 & 3189367 Foxholes Farm, Hoar Stones Road, Low Bradfield S6 6LJ

- 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 Miss R Hague and Mr M Hague against an enforcement notice issued by Peak District National Park Authority.
 - The enforcement notice was issued on 6 October 2017.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a mixed use comprising agriculture, use as a single dwellinghouse, holiday accommodation and as a venue for wedding events and other functions.
 - The requirements of the notice are a) to cease the use of the land for the holding of wedding and other functions; b) permanently remove any marquee on the land erected in association with the wedding events and functions and c) remove the toilet block and screen fencing.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. At the hearing the appellants withdrew the ground (g) appeal, as timing of the hearing meant the arguments no longer applied.
2. It was noted at the site visit that the fence around the toilets is more than 2m high, so does not benefit from permitted development rights.
3. For identification purposes in this decision I have identified the land in 4 parts. These are separated by walls, although there are gates and openings that allow passage between the various areas. Starting from the west and going east, the first is the 'triangle' of land, the second the farmhouse/holiday cottage land, the third is the barn land and the fourth is the parking field. I have also identified the marquee position when next to the barn as position 1 and when in the farmhouse/holiday cottage land as position 2.
4. At the hearing an application for costs was made by the appellants against the Authority. This application is the subject of a separate decision.

Decisions

5. The appeals are 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.

Reasons

6. Grounds (b) and (c)

7. The appellant identifies that the triangle land, the land to the north of the farmhouse, the land to the north of the barn and parking field are in agricultural use. Although not currently actively farmed, these are the subject of subsidy payments for agricultural land.
8. The land within the red line is owned and controlled by Miss Hague's parents, including the farmhouse, holiday cottages and barn. These together with the agricultural use are all managed by Miss Hague's parents. The wedding business is a separate entity and just has use of the land, including the toilets, which are said to be provided by the parents in relation to farming needs.
9. It is common ground that the farmhouse is rented out on a shorthold tenancy and is not associated with the event use. It is not included in the requirements of the enforcement notice, is not affected by it and therefore does not need to be considered in relation to grounds (b) or (c).
10. The holiday cottages have been lawful from well before the wedding use started. While these are used by persons attending weddings, that is not their main purpose. They remain as holiday cottages open to anyone to rent and are not a part of the allegation relating to a venue for wedding events and other functions. To my mind, while it is obvious that persons attending weddings will use the cottages for accommodation, that does not make the cottages a part of the wedding use. As these are managed by Miss Hague's parents, I consider them to remain separate from the wedding use in planning terms. These have not been included in the requirements of the notice to cease, so they do not need to be considered in relation to grounds (b) and (c) as the use can continue even if the enforcement notice is upheld.
11. The appellants note that the barn itself is used for agricultural purposes and not associated with wedding or other events.
12. A marquee is provided for the wedding and other functions on the land in one of two positions. The first position is immediately outside the barn (about 1 or 2 metres from it) and the other is towards the edge of the land, within the walls that also enclose the farmhouse and holiday cottages. Following advice from the Authority and other consultants, it has been arranged that use for weddings in either position does not exceed 28 days (i.e. that required to remain permitted development), including erection and demounting of the marquee, although the appellants acknowledge that the use combined in the two parts is probably around 54 days of the year.
13. Car parking for the events, whether the marquee is in position 1 or 2 is generally within the parking field area adjacent to the barn, using the same access as the barn, unless it is wet weather when parking can be seen from submitted photographs to occur along the road. Vehicles servicing the wedding will use the hard standing area in front of the barn.
14. Camping, if it occurs, as can be seen from photographs submitted, can be almost anywhere within the red line area. It has occurred in the small triangle of land, the land at the rear of the main farmhouse, the land adjacent to the

barn and in the 'car parking' field. Camping is not an 'independent' use like the holiday cottages, but is directly associated with the associated wedding guests and is part of the wedding use.

15. The toilets consist of separated male, female and staff accommodation. The male toilet has two urinals and two wcs, the female area has two wcs and the separate staff area has a wc with its own wash hand basin and is signed staff only. The toilets are located close to the front of the barn on the hard standing area.
16. It is put that the toilets were provided by the farm for farmworkers. This is not the main working farmyard area, with the farmhouse now used for letting and some of the outbuildings used for holiday lets. However, I accept that there may be farmworkers working nearby that may use the toilet facilities during the course of the day. However, I consider it highly improbable that farmworkers would need a separate staff wc, 2 urinals, 2 male wcs and 2 female wcs. I consider that in all probability these have been provided for the events that take place, and that any use by farm workers is incidental to that.
17. People that attend the weddings move about the site. Initially that may be from the parking field to the barn area, and on to the land to the north of the farmhouse. People circulate from the marquee to the barn area where the toilets are located. Others can camp on most parts of the site, including the triangular land, and campers will circulate about the site to get to the marquee and toilets.
18. While there is physical separation between the various parts of the site, there are also ways through the wall, that allow free passage at the time of events.
19. Parts of the land are clearly lawfully used for holiday cottages, residential use in the farmhouse and agricultural use. The appellant has effectively considered the wedding/event use as being where the marquee is located. I do not agree with that, the wedding use is encompassed by the whole of the land used during the event, including setting up, parking, using toilets, camping and generally milling about the site during the event.
20. The appellant put at the hearing that the planning unit should be considered as being in two parts. Firstly the agricultural part, that includes the triangle of land, the barn area and the parking field. The other planning unit they identified was the farmhouse/holiday cottage area.
21. Overall, in terms of the planning unit, I consider that the wedding/event use occurs at times over all of the site. I accept that it comes and goes, depending on where the marquee is located, where the parking occurs and where and whether the camping occurs. I also accept the use changes depending on when and where the wedding use is in operation, and that when events are not happening the agricultural use continues.
22. While the ownership and main occupation is within one control, it is clear that the wedding/event use is not incidental or ancillary to the agricultural use. It may be reasonable to consider the holiday accommodation and farmhouse as a separate unit of occupation in normal circumstances, but it is also clear that the wedding/event use occurs within the land area the appellant identifies as part of the holiday cottage/farmhouse planning unit.

23. However, considering the facts of this case, it is reasonable to look at the entire unit of occupation, even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, as this is a composite use where some of the component activities fluctuate in their intensity from time to time, but some of the different activities are not confined within separate and physically distinct areas of land. I conclude that the whole of the land within the red line is the appropriate planning unit to consider. Therefore, with the use occurring on the whole land, whether or not the marquee is located in position 1 or 2, the extent of the use exceeds the 28 days permitted in a year and the use is not permitted development.
24. Another consideration is where the use is occurring in relation to buildings. Temporary uses of land are permitted for 28 days in a calendar year, but specifically development is not permitted if the land in question is a building or is within the curtilage of a building.
25. The appellants acknowledge that the hardstanding area in front of the barn is part of its curtilage, and this is where the toilets are located. Guests circulate in this area going to and from the marquee. The use is therefore occurring in the curtilage of the building and is not permitted development under the 28-day provision. I also disagree with the appellants' assessment of the curtilage at the rear of the barn. While they have changed part of the hardstanding here to grass, that does not go directly to the question as to whether or not the land is intimately associated with the barn. To my mind, the land to the rear where the marquee is sometimes located is also within the curtilage of the building, it being directly outside the large barn door area and clearly part of its curtilage. The appellants' view of the farmhouse curtilage was that it extended to the top of the grass bank and I consider that is also likely to be where the curtilage for the barn can reasonably be considered to end. However, even if that were not the case, the use is still occurring within the curtilage of the barn in terms of toilets, milling about, setting up the wedding etc.
26. The use is therefore not permitted development, even under the 28 day 'rule'.
27. I conclude overall that what is alleged to have occurred has occurred and that there are no permitted development rights to cover the use, so planning permission is necessary. I have found above that the toilets are not ancillary to the farm use and that the fence, because of its height is not permitted development. The appeals fail on grounds (b) and (c).

28. Ground (d)

29. The appellants' case is that the toilet block has been in position for more than 4 years, which is not disputed by the Authority, so it has become immune from enforcement action through passage of time.
30. However, S173(5) of the Planning Act gives power to require the alteration or removal of buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works be immune from enforcement, so that the land is restored to its condition before the change of use took place.

31. The Court explained in the decision in *Somak Travel (Somak Travel v SSE [1987] JPL 63033)* that, where a notice is served alleging a material change of use and requiring that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased. In this case, while it is possible that farm workers might use a toilet facility here, I do not accept that this extensive facility was provided for farm use, or that it is reasonable to consider that the extensive facility would be needed for farmworkers, so it should not be permitted to remain for such use. Clearly the toilets on this scale were part and parcel of the events use and removal is proportionate to the situation.

32. The appeal on ground (d) fails.

Ground (a)

33. The main issues are:

- The effect on the living conditions of neighbouring occupiers.
- The effect of the use on the character and appearance of the surrounding area and on the significance, architectural and historic interest of the listed building, in particular its setting.

Policies

34. The development plan includes the Policy Framework Core Strategy Development Plan Document Policies (CS) and the Development Management Policies (DM) recently adopted. CS Policy GSP1 requires development to be consistent with the National Park legal duties and purposes. CS Policy GSP3 requires development to respect, conserve and enhance all valued characteristics of the site and buildings that are the subject of development proposals with particular attention paid to impact on the character and setting of buildings, siting and impact on the living conditions of communities.
35. CS Policy L1 requires development to conserve and enhance valued landscape character. CS Policy L3 requires development to conserve and where appropriate enhance the significance of architectural assets and their settings.
36. DM Policy DMC3 requires a high standard of design with particular attention being paid to siting and form in relation to existing buildings, settlement form and character, including impact on open spaces, landscape features and the wider landscape setting which contribute to the valued character and appearance of the area.
37. DM Policy DMC5 notes development of listed buildings will not be permitted if it would result in harm or loss of the significance, character and appearance of the asset or its setting. Where there is less than substantial harm to significance the harm must be outweighed by public benefits, including securing optimum viable use. DM Policy DMC7 requires development to be determined in accordance with DM Policy DMC5. DM Policy DMC14 does not permit development that adversely affects neighbours unless there are adequate control measures in place.

Living Conditions

38. The site is located on the side of a tranquill valley in the countryside where roughly opposite is the village of Low Bradfield and some further buildings down in the valley. There is little between these to attenuate sound generated at the appeal site. It is clear from the evidence submitted by interested parties and from Sheffield City Council that there are serious issues with noise generated by the event use.
39. An abatement notice was issued in 2014 related to the likely occurrence of a statutory nuisance. Since then there have been further complaints and again Sheffield Council was satisfied more recently that the noise generated on another occasion was at the level of a statutory nuisance. The organisers of the event were informed.
40. While this is a temporary use, in practice the events are a fairly regular occurrence during the summer months, when nearby residents can reasonably expect to have peaceful enjoyment of this countryside location.
41. The appellant suggests conditions be considered to mitigate the sound, referring to another venue where this has occurred. However, the evidence presented does not provide any details of this and how it works. In my experience attenuating sound sufficiently from a lightweight structure would be very difficult. The Authority noted that in the case mentioned there was a building involved as well as a marquee, and in any case the recollection is that complaints are still being received.
42. The appellant has made contact with villagers with a leaflet drop providing details of contacts should there be any problems with events. An interested party said that he had followed this advice, but little had been done about the noise, it just being noted that the volume was down as low as possible.
43. To my mind there is clearly a considerable and unacceptable problem with noise and disturbance and on the evidence before me I do not consider it probable that the noise can be mitigated by conditions to the extent that it would become acceptable for the nearby residents. I conclude that the development conflicts with CS Policy GSP3 and DM Policy DMC14.

Character and Appearance & Setting of the Listed Building

44. Foxholes Farmhouse with its farm buildings and linking walls is listed grade II. It is identified in the listing to have been constructed in the mid 19th Century with walls of deeply coursed, squared gritstone, stone slate roof (some replaced by cement tiles). It has an 'E' shaped range in 'Castle' style, with embattled parapets and some blind cruciform arrow loops.
45. I consider that the significance, architectural and historic interest relate to its age, design and materials, particularly the unusual 'Castle' design which forms a prominent feature in the upper part of the valley. The setting of the farmhouse includes the land directly around the building and also the wider landscape where there are views of the building from many different public locations.
46. The listed building and group of buildings generally are prominent in the valley from a number of different viewpoints. Buildings and their traditional character and appearance are important features in the landscape contributing to the

character and appearance of the area. The use has a considerable impact on that character and appearance and the setting of the listed building. The marquee is a large, bulky form that dominates the views when erected. It does not fit in with the traditional building form and the natural materials from which they are constructed. The colour of the marquee adds to its prominence. While a condition could be imposed to require a more subdued colour, I do not consider that this would adequately mitigate the impact because of the form of the marquee. It distracts considerably from views of the listed building and its castle-like appearance and causes considerable harm to its setting. In addition, the cars parked in the field or on the road and camping are again incongruous features in this proximity to the listed building.

47. I appreciate that this is an intermittent use, but still reasonably regular through the summer months. Overall, I consider that the impact of the use on the significance and setting of the listed building and character and appearance of the area generally is very harmful. It conflicts with CS Policies GSP1, GSP3, L1 and L3 and DM Policies DM5 and DM7.
48. I appreciate that policies at local level and as set out in the National Planning Policy Framework at national level support building a strong, competitive economy and a prosperous rural economy, including promoting farm diversification. I place significant weight on this and the public benefit that it brings and note that some mitigation could be achieved through conditions. However, I do not consider that these are sufficient to outweigh/overcome the great harm that is caused to the significance and setting of the listed building, character and appearance of the surrounding area and noise and disturbance.

Ground (f)

49. The appellants' main concern was that the notice should not be seen to be taking away the lawful use rights to have events on the land for 28 days of the year.
50. An enforcement notice cannot remove lawful rights, but in some cases, it can be helpful for the notice to acknowledge this in terms of its construction. However, in this case I have concluded that there are no permitted development rights for the temporary use that has been occurring on the land. I therefore consider that there is no need to amend the requirements, but would reiterate that if there are lawful permitted development rights that can be taken up with a different form of use, the notice could not prevent that from occurring. The appeal on ground (f) fails.

Graham Dudley

Planning Inspector

