



Appeal Decisions

Site visit made on 9 September 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 19 September 2019

Appeal A: APP/U1105/C/18/3218735

Land South of Waxway House, Ottery St Mary, Devon EX11 1QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Kate Powell against an enforcement notice issued by East Devon District Council.
 - The Enforcement Notice (EN) was issued on 23 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of a material change of use of the land from agricultural use to use as a camp site with associated development for more than 28 days in total in any calendar year.
 - The requirements of the notice are: i) Permanently cease the use of the land as a campsite for more than 28 days in any calendar year. ii) Permanently remove from the land the water storage tank, filtration unit including the housing and all associated pipework in the approximate position shown outlined and crosshatched in green on attached Plan B. iii) Permanently remove from the land the composting toilet including the wooden housing and associated pipework in the approximate position shown outlined and crosshatched in grey on attached Plan B. iv) Permanently remove from the land the water tap including all associated pipework in the approximate position shown circled in pink on the attached Plan B. v) Permanently remove from the land the area of hardstanding in the approximate position shown edged and crosshatched in blue on the attached Plan A. vi) Permanently remove from the land all domestic paraphernalia associated with the unauthorised use of the land. vii) Permanently remove from the land the wooden shed in the approximate position shown outlined in blue on the attached Plan B. viii) Permanently remove from the land all material associated with the compliance of I. to VII above.
 - The period for compliance with the requirements is: Within six months of this Enforcement Notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/U1105/W/18/3218734

Waxway Camp, Fire Beacon Lane, Tipton St. John, Ottery St Mary, Devon EX11 1QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Kate Powell against the decision of East Devon District Council.
- The application Ref: 18/1372/FUL, dated 4 June 2018, was refused by notice dated 18 September 2018.
- The development proposed is: 1. Change of use from agricultural land, to a small 'off grid' sustainable camping site, to be open annually from 1 April to 31 October; 2. To retain the water tank, wooden housing for filtration system, water tap and associated pipe work; 3. To retain the compost toilet facilities; 4. To retain the hardstanding; 5. To

replace the existing wooden shed.

Decisions

Appeal A

1. It is directed that the EN is corrected by replacing the first paragraph under section 3 and replacing that with "Without planning permission, the change of use of the land to a mixed use of agriculture and a camp site". Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. While there is a reference in the allegation to the camping use being for more for more than 28 days in any calendar year, the way the EN is worded means that it alleges the change of use to a camp site. However, having read the evidence of both sides, taken into account what I saw at my site visit and my findings on ground (c) below, it seems to me that the camping has not occurred for most of a year and when it has ceased, although the Council question the extent of the agricultural activity, the use of the land has then been as agriculture. I consider, therefore, that the allegation could be better described as a mixed use.
4. There would be no injustice to the appellant if I was to correct the EN accordingly as that is their case. I note here that when the application being considered under Appeal B was submitted it was for camping to occur from 1st April to 31st October, but that has been shortened to now be between 1st May and 30th September each year. I shall consider the proposal accordingly. There would be no injustice to the Council as it has put to me that the use of a camping site or a mixed agricultural and camping use would be unacceptable. I intend to correct the EN.
5. The appellant has made an appeal under s174(2)(b) of the 1990 Act which is that the matters alleged in the notice have not occurred. That, in this case, would be camping and I shall consider that below. However, the appellant's evidence is based on the claim that any camping which has taken place was by family and friends and did not exceed '28 day permitted development rights'. That is a clear reference to Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 1995 (GPDO) which permits the temporary use of any land for any purpose for not more than 28 days in total in any calendar year. On this basis, the appellant's view is that there has not been a breach of planning control. The appellant also asserts that the use of the land remains agricultural. These points better relate to an appeal under s174(2)(c) of the 1990 Act which is "that those matters (if they occurred) do not constitute a breach of planning control". I therefore consider that there is a 'hidden' ground (c) appeal.
6. Although the appellant did not make an explicit ground (c) appeal, the claims made were submitted at the start of the overall appeal. Consequently, they have been in the public domain and available for comment upon by the Council and all interested persons from the outset. As such, there would be no

injustice to any persons if I considered this part of the appellant's case as if it had been made under a ground (c) appeal.

The appeal on ground (b)

7. As a matter of fact, camping on the land has occurred. Consequently, the ground (b) appeal cannot succeed.

The 'hidden' ground (c) appeal

8. The appellant has given dates when camping took place in 2016, 2017 and 2018. It is claimed that for each of those years the number of camping nights did not exceed 28. The Council acknowledges that the site may have been used for camping under the '28 day' permitted development right. There is no evidence presented by the Council to the contrary in terms of days/nights used. However, the Council does assert that the construction and retention of, for example, the wooden shed, the composting toilet and the water storage tank with its associated equipment, ancillary to the use of the land as camp site, means there has been a material change of use.
9. While the introduction of operations on land associated with temporary uses may be relevant to answering the question whether there has been a material change of use, their presence per se does not automatically mean that is the case. Looking at the operations here, including the hardstanding, they are tucked in the top corner of the site and occupy a very small proportion of the land attacked in the EN. They have not made it difficult or impossible to revert realistically to the overall site's normal and previous use of agriculture. Moreover, while the composting toilet may have been installed at the time camping started, the operations such as the shed, water supply and the hardstanding, which the appellant claims was there before, it is stated are also used in association with the land's agricultural use. Also, the character of the site as I saw it, which is how it probably looks for most of the year, is an open agricultural field/meadow within a pastoral landscape like other fields around it.
10. I recognise the Council questions the extent of agricultural activity that may be taking place, but there is little to show that the land has not reverted to an agricultural use following the days when camping took place. I also notice that a local objector draws attention to the numbers of camping days, but as this is based on the Council's premise that the presence of the operations constitutes a material change of use, it does not dissuade me from my findings.
11. I find, as a matter of fact and degree, that the operational development referred to by the Council and its retention over the year, does not show that there has been a breach of planning control consisting of a material change of use thus constituting a breach of the 28-day GPDO limitation. As such, in this regard, there has been no breach of planning control. My finding underlines what I consider has happened here, which is a mixed use of the land.
12. I acknowledge that the temporary use of land rights conveyed by the GPDO do not cover land within the curtilage of a building. The wooden shed and the composting toilet (now dismantled) are buildings. However, generally, to fall within the curtilage of a building, it is usual to establish that the land serves the purpose of a building in some reasonably necessary or useful manner. In this case, I consider the relationship is the other way around in that the buildings are serving the land. The shed is used for the storage of tools and a

small tractor associated with the land use and the toilet is used by persons when using the land. The appellant also says that the shed was erected by the previous owner of the land which would be prior to any camping use. Furthermore, while the curtilage to the two small buildings is not defined or marked out on the ground, it seems to me, as a matter of fact and degree, that it is confined to roughly no more than the top corner of the field and not the whole field or where the camping takes place. I find that the buildings do not preclude the temporary use of land under the GPDPO for camping.

13. I agree with the Council that the camp site has not been used by members of a recreational organisation, but this has not been claimed by the appellant anyway.

Appeal A Conclusion

14. Taken in the overall round, I conclude on the balance of probabilities that the alleged material change of use, as corrected, does not represent a breach of planning control by reason of the camping use taking place within the terms of the planning permission granted by the GPDPO for the temporary use of land. As such, the ground (c) appeal succeeds and I shall quash the EN. The appeal under ground (a), the deemed planning application, does not therefore fall to be considered. I shall though now consider the planning merits of the application under Appeal B and whether planning permission should be granted for a camp site.

Main Issue – Appeal B

15. The main issue is the effect of the proposal on the character and appearance of the area, having regard to the site's location in the East Devon Area of Outstanding Natural Beauty (AONB).

Reasons

16. Along with National Parks and the Broads, AONBs have the highest status of protection when it comes to conserving and enhancing their landscape and scenic beauty. The appeal field has boundary hedges but is otherwise open and typical of the surrounding pastoral landscape. The introduction of up to 8 cars and associated tents and holiday paraphernalia, even for only the summer months, would significantly detract from the unspoilt natural appearance of the field. The adverse visual effect would be relatively localised, but it would not conserve the scenic quality of the area. Moreover, while the operation of the camp site would not unduly affect the living conditions of neighbours, the extra traffic and general comings and goings, and the activities of campers on holiday, would intrude into and undermine the tranquillity of the surroundings. This adverse impact is likely to be most closely experienced by users of the public bridleways and footpaths in the area.
17. I have read carefully the appellant's grounds of appeal and the Design and Access Statement submitted with the planning application. I recognise that the site would be run on sustainable principles 'off grid'. It is also intended that biodiversity would be enhanced. Hedgerows would be maintained, and a small orchard has been planted. Tourism also brings economic benefits to an area. I have also noted the planning permissions granted for other caravan and camping sites within the East Devon AONB. However, I have very limited details to the backgrounds of those sites. I cannot draw any meaningful

comparisons between them and the appeal scheme and, in any event, each proposal should be considered on its individual merits and circumstances.

18. None of the other matters raised outweigh the great weight that the National Planning Policy Framework requires should be given to conserving and enhancing the landscape and scenic beauty of an AONB. The proposal does not accord with the landscape conservation aims of Strategy 46 from the East Devon Local Plan. I note the other policies referred to from the adopted Ottery St Mary Neighbourhood Plan (NP). However, the proposal also does not accord with many of these as it would not maintain the rural character of the surroundings or make an overall positive contribution to the NP area. Even if the scheme did accord with rural diversification aims of the NP, the development would conflict with the development plan taken as a whole.

Appeal B Conclusion

19. Consequently, I conclude that the appeal should be dismissed.

Gareth Symons

INSPECTOR