



Appeal Decision

Inquiry held on 24-25 July 2019

Site visit made on 26 July 2019

by Simon Hand MA

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

Decision date: 11 October 2019

Appeal Ref: APP/Y3940/C/18/3205597

Land known as Fairfield Farm, Fairfield Meadows, Southwick, Trowbridge, Wilts, BA14 9RT

- 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 Mr Daniel Doel against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice, numbered 16/00309/ENF, was issued on 21 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of a building from an equestrian tack room to a building used for residential purposes (shown hatched in the approximate location on the attached plan).
 - The requirements of the notice are (a) permanently cease the use of the building for residential purposes; (b) permanently remove all ancillary residential items and paraphernalia which facilitates the unauthorised use from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Costs Application

2. An application for costs was made by the Council and this is subject to a separate decision letter.

Background to the Appeal

3. The family background to Fairfield Farm is directly relevant to the evidence that was given at the Inquiry, and to understanding the situation facing those involved today. Kim Doel, was the original owner of the farm, and was married to Linda Doel and had a son Daniel Doel, the appellant. After Kim and Linda were divorced, Linda received the family home as a final settlement and lived there with Daniel. This house in Frome Road is a few hundred metres from the farm. Meanwhile planning permission had been obtained for a storage and tack room which was constructed in the shape of a large chalet with a bathroom and kitchen. In 2009, Kim Doel received planning permission for a retrospective change of use from the tack/store to a residential use for an equestrian worker

- for a limited period. Conditions required the occupation of the chalet to be limited to a person working in connection with the equestrian business at the farm, and that it should revert back to a tack room on 1 April 2012.
4. Kim Doel was already living in the chalet with his new partner, Jane Doel, but at some point, had had a relationship with Cindy Stenning, and they had a child Lorna. Soon after getting the retrospective planning permission (around Christmas 2009), Kim Doel died without leaving a will and his assets were disputed between Jane Doel who stayed on in the chalet, Linda and Daniel, the latter expecting to inherit the farm, and Cindy Stenning, on behalf of her daughter Lorna. This led to a protracted and bitter legal dispute. Sometime in 2010, according to his evidence, Daniel took over the operation of the equestrian business on the farm, which comprised 10 loose boxes and grazing. Originally, these stables had been granted planning permission in 2001 and were described as a racehorse rehabilitation centre, but it seems that it was operated, from at least 2010 by Daniel as a DIY livery. There is no evidence it was ever a racehorse rehabilitation centre.
 5. On 30 June 2012 Jane Doel left the chalet following the resolution of her dispute over the assets. Daniel and his mother were still in dispute with Cindy Stenning. This dispute was apparently finally settled by a 'Tomlin Order' dated 3 July 2014, but this was immediately repudiated by Cindy Stenning, and the final dispute was not resolved until February 2015. There is no dispute that Daniel was living in the chalet from some point in 2015 and has occupied it ever since.
 6. In 2016 a complaint was made to the Council about the apparent storage and repair of motor vehicles on the farm. On investigation Council officers realised Daniel was living in the chalet in breach of the condition that it should have reverted back to a tack room in 2012. An application was made for a permanent change of use to regularise the situation and this was refused. In 2017 an LDC application was made in which Daniel argued he had been living in the chalet since 2012 when Jane Doel moved out. He kept a very low profile and occasionally stayed in a static caravan, also on the farm. This was to hide the fact that he had taken up residence in the chalet from Cindy Stenning, as during this period ownership of the farm was very much in dispute. The LDC was refused and an enforcement notice issued which has led to this appeal.

The Appeal on Ground (d)

7. To make sense of the evidence it is important to understand that Linda Doel has certain legal rights to look after her son's interests. She deals with all his paperwork. Daniel is not good at reading or writing or dates and has a short attention span. He also has a congenital disability which makes walking difficult at times and causes back pain. The condition is degenerative.
8. The appellant's ground (d) appeal as put forward at the Inquiry, was that he had been living at the chalet for more than 4 years. Unusually however, three different scenarios have been put forward. The Council's version of events is that following the departure of Jane Doel in 2012, the chalet reverted to a tack room in accordance with the condition on the 2009 planning permission. Officers visited the site and took photographs of the living room which was being used to store various items of tack, bridles, saddles and a sleigh. They concluded the residential use had ceased and the tack room use recommenced. Following that, on or around 3 June 2015, Daniel began living in the chalet.

The four year period for immunity begins on 21 May 2014, so the ground (d) should fail.

9. Daniel's case as originally described in his proof was essentially the same as that put forward to support the 2017 LDC application, that he had actually been living in the chalet from the day Jane Doel moved out. He slept on a camp bed, which he stored in a cupboard and left little evidence of residential use in order to fool Cindy Stenning. Ms Stenning went to the site regularly and as explained above there was a considerable level of antagonism between them. In both his statutory declaration for the LDC and the statement for this appeal he confirmed there had never been a tack room in the chalet and the residential use had carried on without interruption from 2009 to the present day. He further explained in his appeal statement that a few items of tack were stored in the front room, but only to fool Ms Stenning. Proofs were provided from various witnesses who would be called to back up this version of events.
10. Having read this case, I wrote to the parties to suggest the ground (d) appeal could not succeed. The chalet had a planning permission for residential use and had been occupied by Kim Doel, and there is no suggestion he did not fulfil the condition that it should be occupied by a person involved in the equestrian business. The continued occupation by Jane Doel, who was not involved in the equestrian business was in breach of that condition. The further occupation by her and then Daniel, after 1 April 2012 was in breach of the second condition requiring its return to a tack room use. As residential occupation had been continuous, there had been no material change of use back from residential to tack room and therefore no subsequent material change of use from tack room to residential. S171B of the Act says at 171B(2) "*Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*". As there was no change of use, s171B(2) does not apply. The allegation should be for a breach of condition and the period for immunity is 10 years as provided for by s171B(3). Neither condition had been breached for 10 years.
11. At the Inquiry, Daniel changed his case. He now said he had in fact lived partly in the chalet, partly in the static caravan and partly at home. The occupation of the chalet was still low key, with the bed hidden every day in order not to antagonise Ms Stenning, but it would seem to me from what Daniel, and others said, that the occupation of the chalet was intermittent. At first there was no electricity, but (although there were different opinions on this) it would seem there was hot and cold water. Daniel ran extension cables from the farm buildings to provide electricity and had a little furniture. At some point he also moved some gym equipment into the lounge, this was again to fool Ms Stenning into believing the chalet was being used as a gym or store, not as a residence.
12. As the court cases progressed, Daniel says he became more confident about living in the chalet and did so in an increasingly open manner. His mother, Linda Doel explained that this began in late 2013, when it became clear to them that Ms Stenning did not want the farm, but just part of the land that it was hoped could be developed for housing. From then on, Daniel was confident he would eventually inherit the farm and, according to his mother, he then lived mostly either in the static caravan or the chalet. However, it is clear

that he still, now, visits home regularly to use an orthopaedic bath, get his clothes washed and so on.

13. The various witnesses called on the appellant's behalf did not add much by way of verifiable facts. In sum their evidence could be summarised as they saw Daniel around the farm, he was definitely living in the chalet, but from when and to what extent it was impossible to say. I note however, that no-one mentioned the chalet being used as a tack room, and Malcolm Snook, who was a tenant on the farm and stored various vehicles outside the chalet, said he never saw any tack in the chalet.
14. To be successful on the basis of four years, the appellant has to show that the conditions of the 2009 planning permission were fulfilled and the tack room use resumed. Subsequently, there was a material change of use back to residential, from when the 4 years begins to run. The appellant's representatives did make comments to the effect that there was doubt the 2009 planning permission was ever implemented, but no evidence has been provided to support this assertion and I have no reason to believe the 2009 was not implemented, if for no other reason than that it was retrospective!
15. The Council provided photographs showing the tack room in use after Jane Doel had left and closed their enforcement investigation. The appellant's evidence was that a livery tenant used the chalet for tack storage from May to November 2012. The livery tenant had a key to the chalet and there is an e-mail from the solicitor which demonstrates this was returned in November 2012. However, on his own and his mother's admissions Daniel was also partially living at the chalet at the same time, a point emphasised in the appellant's closing submissions, and as Daniel says the tack was just for show. No-one else recalls the tack being there and the chalet is some distance from the stables, making it an unlikely tack room to start with.
16. In my view it takes more than placing some items of tack in a room to be confident the use of the building as a whole has changed from a residential to a tack-room and store use, especially as it seems at least some level of secretive occupation was taking place at the same time. I consider the Council were fooled into accepting the tack room use had recommenced and that an occasional low level residential use continued all through the period. On that basis the ground (d) appeal cannot succeed as explained above.
17. However, if I am wrong in my assumption about the tack room, I shall look at the evidence as if the tack room use did recommence and subsequently ceased in November 2012. From that date on it seems some residential occupation of the chalet took place, but only occasionally. The caravan and the house in Frome Road were also used by Daniel. The issue is when did full time occupation of the chalet take place? It is quite clear Daniel was still living partially at home until late 2013, but thereafter he either lived in the chalet or the static caravan. The appellant's case is that once he was free of litigation from Ms Stenning then he commenced permanent occupation of the chalet.
18. Unfortunately, when this occurred is also disputed. In closings the appellant's barrister made it clear the occupation began no later than 24 April 2014 and the final Tomlin Order. This is before 21 May 2014 and so longer than 4 years. However, although I have a copy of a Consent Order dated 22 April 2014, the actual Tomlin Order is dated 3 July 2014. The significance of this July date will be explained below. However, we know that Ms Stenning reneged on the

Tomlin Order which was not finally upheld until February 2015. It thus is really not clear from the documents when Daniel would have felt confident of living permanently in the chalet.

19. Fortunately the Council have various letters from Linda Doel which shed some light on the issue. Linda Doel wrote to the Council tax department informing them of a change in Daniel's circumstances. That letter is dated 10 March 2015. It says that in December 2015 the estate was settled and Daniel became the owner of the farm and has been residing in a static caravan since 3 June 2015. Obviously, these dates are problematic and Mrs Doel explained she had been under considerable stress at the time – for various personal reasons that she provides evidence for and which I need not go into further. That led her to mix up the dates. She says the letter is meant to be dated 10 June 2015, the December 2015 date should be December 2014, and the 3 June 2015 should be 3 June 2014 as that is the date of the Tomlin Order (although in fact the Tomlin Order is dated July not June). Why she would wait a year and a week to write is unclear, but the Council have a second letter dated 1 August 2015, apologising for the confusion caused by the wrongly dated first letter. It says that letter should have been dated 10 June 2015 (agreeing with Mrs Doel's oral evidence). The letter then says *"....the contents of the letter clearly state that Daniel moved into the caravan on 3 June 2015. I did not inform the council on that day because I was unsure how Daniel would cope as he has never lived independently. After one week Daniel did appear to be coping with my support and I informed the Council of the change on 10 March 2015"*. Mrs Doel was clearly under some stress as she again gets the date of the letter wrong (saying 10 March 2015 when she meant 10 June 2015), but nevertheless it is clear she waited a week and then wrote to tell them of his move. A week before the 10 June 2015 is 3 June 2015, not June 2014. A further letter of 7 November 2015 writes to say that Daniel has now moved from the static caravan to the chalet for health reasons. This letter again refers to the wrong date of 10 March 2015 for the first letter, but there is no reason to doubt the correct date, as explained by Mrs Doel was 10 June 2015. All the rest of the evidence clearly points to 3 June 2015 as the date Daniel moved from home to the static caravan. Mrs Doel explained at the Inquiry that the date in November 2015 was correct, it was then he moved from the static caravan to the chalet following a motorbike accident.
20. Even if I accept Mrs Doel's explanation that she was confused and she was really writing about an event that happened a year before (June 2014), which I don't as then the *"after one week"* explanation wouldn't make any sense at all, but even if I did, then 3 June 2014 is still within the four year period and so does not help the appellant's case and the move is to the static caravan not the chalet.
21. One final piece of evidence is that the Council's housing and benefit team recorded a change of address for Daniel from living with his mother at Frome Road to Fairfield Farm. The date of that change was 3 June 2015.
22. I am happy to accept that Daniel from time to time stayed in the Chalet, from June 2012 until 2015, and Mrs Doel thought not to bother the authorities with the complex details of his living arrangements until they were finalised. But, as to the permanent occupation of the chalet on a continuous basis, there is at best vague and unsubstantiated evidence from the appellant and his mother that he was probably living in the chalet some time in 2014. This is supported

by vague comments from the other witnesses who saw him occasionally. Even if the Council had produced no evidence of their own this would not have convinced me that on the balance of probabilities there had been continuous occupation of the chalet for 4 years prior to 21 May 2018. However, there is clear documentary and oral evidence that Daniel did not move to the chalet until November 2015. Even Mrs Doel's corrective explanations only put Daniel in the static caravan in June 2014, which is too late and in the wrong place.

23. The appellant's barrister made much of the fact that Daniel has never paid Council Tax, but I fail to see how that is relevant to the date issue in the letters. The Council also put forward Ms Stenning as a witness and the appellant's barrister did much to undermine her testimony. I agree that she was a somewhat volatile witness, who clearly did have an axe to grind, and I have not needed to rely on her testimony at all.
24. In conclusion therefore whether I consider 10 years or 4 years the appeal on ground (d) fails.

The Appeal on Ground (a)

25. For this ground to succeed, the appellant needs to demonstrate there is an essential need to live in the chalet at Fairfield Farm. During cross-examination the appellant's agricultural advisor admitted that he could not demonstrate the business was viable and in closings the appellant's barrister accepted this and did not deal with the ground (a) at all. Nevertheless, this ground has not been withdrawn and I shall deal with it briefly.
26. Core Policies CP1 and 2 seek to strictly control residential development. Southwick is classed as a large village with a defined settlement boundary. The appeal site falls outside this boundary and in the open countryside. CP48 deals with supporting rural life, and states that proposals for residential development in the countryside will only be supported in a certain limited set of circumstances, the relevant one for this appeal being to meet the accommodation needs of workers who need to live at or in the immediate vicinity of their place of work. Paragraph 79 of the NPPF supports isolated homes in the countryside where there is an essential need for a rural worker to live permanently at or near their place of work.
27. In this case there are 10 loose boxes on the farm which is operated as a DIY livery business. This involves people renting one or more loose boxes for their horses and looking after them themselves. There is little day to day involvement for the operator. In 2017 Daniel's mother drew up a business plan which involved increasing the number of loose boxes to 15, providing a fishing lake and the introduction of a disabled riding school. None of this seemed to be properly costed, the injection of £150,000 from Daniel's mother was to buy land that is currently rented. There is no information on a likely market or demand for such services, it seemed to be mostly wishful thinking. Indeed it didn't form part of the appellant's case as advanced by their agricultural expert, he had only been given a single set of accounts (which showed a loss) and a verbal description from Linda Doel.
28. Part of that description mentioned the rehabilitation of racehorses, and I understood this was actually going on at the moment. However, no evidence for this activity has been provided, nor any details of what it comprises or how much income is derived from it. It seemed to me the livery business, such as

it was, had been bumping along for the last few years, barely turning a profit and the expansion plans are more of a wish list, rather than a detailed business plan. Even if an expanded business were to be established, the plans show the whole operation to be managed by Daniel Doel, on his own, and allows for no other employees. This too seems to be wishful thinking.

29. Both the appellant's and the Council's expert witnesses agreed that if there was a need to live on site it was basically for security purposes. A history of police reports showed some attempts of theft of equipment over a number of years, but this on its own does not establish an essential need to live on the site. Indeed it was never actually explained why a presence was required in the chalet, rather than the family home, a few hundred metres away. Aside from the security aspects the appellant's case seemed to rely on the argument that Kim Doel managed to get planning permission for a dwelling in 2009 and there must have been a good reason for that, and that there had been a livery at the farm for 20 years or so, so it must be viable. No evidence was provided to support either contention. Thanks to a lost file, no-one knows how Kim Doel managed to secure the original planning permission, and the livery seems to have been ticking over at barely subsistence level for many years.
30. None of this supports the idea that there is an essential need to live at the farm, and even if there was, it doesn't explain why the nearby house at Frome Road would not be acceptable. Given that there is no essential need for a worker to live on site, nor does it look as if there will be one in the foreseeable future the proposal is contrary to local and national policy. No other material considerations were advanced to support the ground (a), which must therefore fail.
31. I was asked to look at a number of other agricultural workers dwellings in the area, which had been granted planning permission by the Council. However, as I knew nothing of the circumstances of these cases, the physical location or appearance of the buildings did not seem to add anything to the appeal.

The Appeal on Ground (f)

32. This ground was based on a misunderstanding of planning law. Once the notice is upheld and the requirements have been carried out, the unlawful residential occupation will have ceased. The 2009 planning permission is now spent and the lawful use of the building is as a tack room and store. The appellant can carry on using the building for its lawful purpose.
33. The appellant argues the notice interferes with his rights to make a temporary change of use for up to 28 days as allowed for by Schedule 2, Part 4, Class B of the General Permitted Development (England) Order 2015. However, the notice does not affect the lawful exercise of any permitted development rights granted by the GPDO and in any case the 28 day change of use refers only to land and not to buildings.
34. The second argument is that the appellant can store anything he likes in the chalet, especially as there is no requirement to recommence the tack room use. In fact the appellant cannot store "anything he likes" in the chalet. It can only be used for a lawful purpose, and the only lawful use is, as I understand it, a tack room and store for an equestrian business. The notice cannot require that use to recommence, that is up to the appellant. He may choose to do nothing with the chalet, or to apply for some other use.

35. The appeal on ground (f) fails.

The Appeal on Ground (g)

36. The appellant's arguments here are that he should be allowed either three years to comply or three years subject to the condition that if the livery business ceases then it should be 6 months from the date of cessation, whichever is the sooner.

37. Like the ground (f), this ground too was not dealt with in the appellant's closings and despite some helpful comments by the Council's barrister I am still struggling to understand the logic of the appellant's arguments. By the time we reach ground (g) it will already have been determined that the low level livery business does not need a person to live permanently on the site. Why, therefore a complicated '3 years unless the business closes' type requirement is appropriate has not been explained. It also ignores the fact that such a requirement would almost certainly fail the test of certainty.

38. The requirements simply require the appellant to cease living in the chalet. He has another home to go to, which is nearby, so 6 months would seem ample time to achieve this. Whether, in the long term the appellant decides to move or close down the livery business is a separate matter. I should note that Mrs Doel did say she thought Daniel would be better of not living at home, as he was just beginning to develop a sense of independence, and that sheltered accommodation might be more suitable. But this is a longer term issue and does not affect the immediate time limit to comply with the notice.

39. The appeal on ground (g) fails.

Conclusions

40. The appeal fails on all the grounds raised. I shall dismiss the appeal and uphold the notice. The appellant will, therefore have 6 months from the date of this decision to comply with the notice.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Robert Trevis – of counsel

He called

Daniel Doel

Robert Mills

Malcom Snook

Malcolm Carr

Linda Doel

Tim Hector

Michael Matthews

FOR THE LOCAL PLANNING AUTHORITY:

Scott Stemp – of counsel

He called

Tony Coke

Steven Vellence

Cindy Stenning

Sean Williams

DOCUMENTS

- 1 Statement of Common Ground
- 2 Council's costs application
- 3 Council's closings
- 4 Appellant's cost response