The Planning Inspectorate

Appeal Decisions

Site visit made on 23 July 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17 October 2019

Appeal A: ref. APP/J3530/C/18/3198904
Land adjoining Oak Spring, off The Street, Darsham IP17 3QF
also known as Hodmadod Farm, The Street, Darsham IP17 3QF

- 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 Act).
- The appeal is by Colin Thackeray against an enforcement notice issued by Suffolk Coastal District Council.
- The enforcement notice, ref. ENF/2017/0170/USE, was issued on 22 February 2018.
- The breach of planning control alleged in the notice is the change of use of land from agriculture to a domestic use, the stationing of a mobile home, with wooden cladding and roof which has the capacity for primary residential use, the stationing of two metal containers, a modular building and the storage of non-agricultural items including bricks, sinks and plastic containers, a trailer and a bench/seat.
- The requirements of the notice are to:
  1. Permanently cease using the Land for the stationing of a mobile home (identified on the photos attached to the notice as A), two metal containers (identified on the photos attached to the notice as B) and a modular building (identified on the photos attached to the notice as C).
  2. Permanently remove from the Land the mobile home wooden cladding and roof identified on the photos attached to the notice as A, Al, A2), two metal containers (identified on the photos attached to the notice as B) and modular building (identified on the photos attached to the notice as C) and any other fixtures or fittings used to attach them to the ground.
  3. Permanently cease using the Land for domestic purposes and revert the land back to its original agricultural use as agricultural land.
  4. Permanently remove from the land all non-agricultural items or equipment including but not exclusive to bricks, sinks, plastic containers, a trailer and a bench/seat.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Appeal B: ref. APP/J3530/C/18/3199208
Land adjoining Oak Spring, off The Street, Darsham IP17 3QF
also known as Hodmadod Farm, The Street, Darsham IP17 3QF

- 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 Colin Thackeray against an enforcement notice issued by Suffolk Coastal District Council.
- The enforcement notice, ref. ENF/2017/0170, was issued on 22 February 2018.
- The breach of planning control alleged in the notice is without planning permission the erection of two wooden sheds, a pergola, a wooden field shelter and hardstanding, sink unit and large stone pillar.
- The requirements of the notice are to:
  1. Permanently remove from the land the two wooden sheds (identified on the photos attached to the notice as 1 and 2).

2. Permanently remove from the land the pergola (identified on the photos attached to the notice as 3).
3. Permanently remove from the land the wooden field shelter and hardstanding (identified on the photos attached to the notice as 4 and 5).
4. Permanently remove from the land the sink unit (identified on the photos attached to the notice as 6).
5. Permanently remove from the land the large stone pillar (identified on the photos attached to the notice as 7) and any other fixtures and fittings used to attach them to the ground.

- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A: ref. APP/J3530/C/18/3198904

1. The enforcement notice is quashed.

Appeal B: ref. APP/J3530/C/18/3199208

2. I direct that the enforcement notice is varied by:

   DELETION of the words *'large stone pillar'* from the allegation and from Requirement 5; and,

   SUBSTITUTION of the words *'electrical intake housing built of brick, with a felted roof and an access door'.*

   Subject to that variation, the appeal is allowed on ground (c) with respect to the sink unit and the enforcement notice is quashed in that regard.

   Otherwise the appeal is dismissed, and the enforcement notice is upheld.

Background matters

3. The appeal site lies in open countryside on the southern side of The Street at its junction with the A12 trunk road. It extends about 190 metres back from the A12 and has a width of roughly 130 metres. Access is from The Street at the eastern side of the site. The western part of the site – approximately two-thirds of the depth – is an open field. A public footpath crosses the land roughly diagonally from the access gate to a point on the A12 boundary.

4. Along the eastern site boundary is a mown access track leading from the gate adjacent to The Street towards the southern boundary. Along the western side of the track a small orchard and Christmas tree plantation is being established. Close to the southern boundary at the end of the track are a blue shipping container, a timber shed and other items such as a tractor, a see-saw, and a garden seat. There is a compound for keeping chickens and ducks slightly further to the west, fenced with plastic mesh on metal posts. I saw the pig ark adjacent to the Christmas tree plantation (not as shown on the photograph attached to the enforcement notice).

5. I saw that the mobile home, situated towards the eastern side of the site, adjacent to the Christmas tree plantation, is partially clad with timber framing and black ship-lap boarding, and has a pitched corrugated fibre sheet roof structure built above. Inside, there is a bedroom with double bed, a small bathroom and WC. There is also a kitchen area with electric cooker, fridge,

worktops, cupboards, and sink. Beyond that is a seating area with sofas, a stove, television and a desk.

6. Close to the western side of the mobile home is an area of mown grass with planting of ornamental trees including willow, maple and conifers, a barbecue, outdoor table and seating, and a small statue. There is a shed close to the eastern side as well as a free-standing WC cubicle. A pergola stands at the access to the open field to the west. The grass is generally well mown.

7. The modular building, field shelter, hardstanding and sink unit are close to the eastern side of the open field, and there is access through the pergola and a gate. At the time of my visit there were two donkeys grazing in the open field.

8. In 2017 the Council issued a Planning Contravention Notice (PCN)[1]. The appellant's responses in August 2017 included that the mobile home did not have a current use, but that it was to be used as an office and washing facility. He also confirmed at that time that the mobile home was not used for overnight accommodation and had not been. However, he stated he was unsure whether it might be used in that way in the future.

The site visit

9. The appellant is concerned that I may not have seen some relevant features during my visit. However, I looked at all the items referred to by the Council and identified in photographs attached to the notice. I also looked generally at the state of the site, the boundaries, and the layout of planted areas and pathways. Furthermore, I walked along the verge of the A12 to the west of the site, where I was able to see the open field and the view towards the donkey shelter and the planted area beyond, where the mobile home and other structures are situated. I am satisfied that I have seen all relevant features of the appeal site sufficient for me to make my determinations.

The enforcement notice in Appeal A

10. The change of use enforcement notice refers to a change to *domestic use* and to the stationing of a *mobile home.* However, *'domestic'* is not a use of land, and the *'stationing of a mobile home……which has the capacity for primary residential use'* is not in itself a breach of planning control. I consider these references to use of the site are so vague that they cannot reasonably be interpreted in any useful way.

11. Following my visit the Inspectorate wrote to the parties with my view that for the notice to be valid it should be varied to refer to a change to *residential use*, and the stationing of a mobile home *for residential use*.

12. In response, the Council confirmed that they would not suffer prejudice as a result of the proposed variation. However, the appellant expressed a strong view that he would be prejudiced by such changes and considered that this was introducing new evidence. However, regarding the point about evidence, the purpose of my visit was to observe the site and its use, and to record my findings in order to inform my determinations. My opinion about the use of the mobile home was not new evidence, but a record and more precise definition of a situation of some long standing.

[1] Planning Contravention Notice ref. ENF/2017/00170/USE, dated 21 July 2017.

13. The deficiencies I have identified in the notice mean that the appellant cannot know fairly what he has done wrong and what he must do to remedy it. In my opinion the notice is uncertain to the degree that the appellant cannot tell in what respect it is alleged that he has developed the land without permission. Furthermore, he has little knowledge of planning matters, and has not taken any professional advice. Overall, he would be unable to put his case effectively on the suggested variation. Although I have wide powers to vary an enforcement notice, I could not do so in this case without causing serious prejudice to the appellant. The notice does not comply with s.173(2) of the Act, and I find it to be void for uncertainty. I consider the enforcement notice should be quashed.

14. However, I should point out that s.171B(4)(b) of the Act provides that the Council are not prevented from taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Appeal B on ground (c)

15. Ground (c) is that there has not been a breach of planning control. This is a 'legal ground' where the burden of proof is on the appellant to show that on the balance of probabilities the alleged development is in not breach of planning control. This might be the case where for instance express planning permission has been granted for the development, or where it is development permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

16. The operational development enforced against is the erection of two wooden sheds, a pergola, a wooden field shelter and hardstanding, a sink unit and a large stone pillar.

17. Although the use of the site is defined as agricultural, and the appellant claims it is a farm, there are no activities being undertaken of any significant agricultural character. From my observations, the uses taking place are of a distinctly small-scale domestic character.

18. One of the sheds on the site stands close to the blue container near the southern boundary towards its eastern end. The other stands near the mobile home. Such sheds might be permitted development if they were within the curtilage of a dwellinghouse or were in connection with an agricultural use[2]. However, there is no dwellinghouse on the land. The sheds serve no apparent or demonstrated agricultural use. They have been erected without the benefit of planning permission, and on the balance of probabilities a breach of planning control has occurred.

19. The pergola stands at the gateway between the grassed and planted area around the mobile home and the open field. It is a timber structure, permanently attached to the ground, and its construction would have entailed a building operation. Although this could be permitted development if, for instance, it were within the curtilage of a dwellinghouse, that is not so elsewhere. It is a structure that requires planning permission.

[2] Class E of Part 2 to Schedule 2, and Class B of Part 6 of the GPDO

20. The appellant has two donkeys grazing on the western, open area of the appeal site, and I concur with the Council that grazing donkeys or horses on agricultural land can take place without making any material change in the use of the land or obtaining planning permission. However, any buildings or infrastructure associated with such equestrian type activities would be development requiring planning permission – as for instance construction of a stable building or field shelter.

21. The wooden field shelter and hardstanding stand within the open field close to the eastern boundary. The shelter is a flat-roofed timber building clad in ship-lap boarding, standing upon pre-cast concrete slabs. It is used as a shelter for the two donkeys. It is argued that the site is used as a farm, and the shelter is associated with that use.

22. However, donkeys are not for any of the purposes set out in s.336 of the Act – that is, the production of food, wool, skins or fur, or for the purpose of their use in farming the land. I consider keeping donkeys is more akin to keeping domestic pets, or an equestrian activity, and cannot realistically be regarded as agricultural. As noted above any buildings associated with such non-agricultural development would require planning permission. In this case the shelter and hardstanding have been erected, but no planning permission has been obtained.

23. The sink unit enforced against comprises a metal frame incorporating a large stainless-steel dish and connected to a mains water supply. It stands close to the field shelter and provides a drinking trough for the donkeys. In my opinion this should realistically be regarded as *de minimis* development for which no planning permission would be required.

24. The large stone pillar referred to in the notice is actually a brick-built structure in the region of 1.4 metres high with a felted roof, a letter-box attached to its side, and a decorated access door. It stands near the roadside on the eastern side of the site entrance. Since the description of the structure in the notice is at odds with the actual type of construction I intend to vary the description in the allegation and in Requirement 5 to read: *'electrical intake housing built of brick, with a felted roof and an access door'.* I do not consider any party to be significantly prejudiced by this variation.

25. The purpose of the structure is to house the incoming electrical main to the site. This is clearly a permanent structure standing on a foundation, so that it is attached to the land, and its construction entailed building operations. As such it comes within the definition of development in s.55(1) of the Act, and it requires planning permission under the provisions of s.57(1).

26. The appellant clearly has a right to install an electricity supply to his site, and there are certain permitted development rights available to statutory undertakers[3] for construction of equipment relating to electrical lines. However, a private land owner such as the appellant needs planning permission for construction of an electrical main housing such as this, but none has been obtained in this case.

27. Overall, I consider the two wooden sheds, the pergola, wooden field shelter and hardstanding, and large stone pillar (electrical intake housing) are

[3] Class B of Part 15 to Schedule 2 of the GPDO.

structures that require planning permission. No planning permission has been obtained, and on the balance of probabilities a breach of planning control has occurred as a matter of fact. The appeal on ground (c) therefore fails with regard to these structures.

28. I have found that on the balance of probabilities the sink unit is not an item for which planning permission is required, and its presence on the appeal site does not constitute a breach of planning control. The appeal on ground (c) therefore succeeds with regard to this item, and I intend to quash the notice insofar as it relates to the sink unit.

Other matters

29. The appellant refers to other sites in the area where planning permission has been granted for major schemes. However, these are developments that have been approved following consideration in the light of the statutory development plan and have been subject to public consultation. I do not consider these schemes are comparable with the case before me.

Conclusions

Appeal A

30. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground (c) set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Appeal B

31. On the balance of probabilities, the appeal on ground (c) should succeed in respect of the sink unit referred to in the allegation, and following variation as noted above the notice will be quashed in that regard.

32. Otherwise, on the balance of probabilities the appeal on ground (c) fails in respect of two wooden sheds, a pergola, a wooden field shelter and hardstanding, and large stone pillar which are stated as constituting the breach of planning control. Following variation of the enforcement notice as noted above it will be upheld in that respect.

Stephen Brown

INSPECTOR