



Appeal Decisions

Site visit made on 14 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 30 October 2019

Appeal A: APP/Y1138/C/18/3218618, 3218619, 3217620 & 3218621 Land at NGR 317450 110777 at Tickle Penny, Clayhidon, Devon

- 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 Clifford Hillier, Miss Annabelle Hillier, Miss Phoebe Hillier & Miss Amber Hillier against an enforcement notice issued by Mid Devon District Council.
 - The Enforcement Notice (EN) was issued on 29 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from use for agriculture to a mixed use for agriculture, the storage of building materials, and the siting of (1) a shepherds hut, (2) a timber-clad shed, and (3) a motorhome together with associated domestic paraphernalia.
 - The requirements of the notice are: 1. Permanently remove from the Land the building materials, the shepherds hut, the timber-clad shed and the motorhome; 2. Permanently remove from the Land all items of domestic paraphernalia; 3. Restore the Land to its former condition.
 - The period for compliance with the requirements is three (3) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.
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Appeal B: APP/Y1138/C/18/3218630, 3218631, 3218632 & 3218633 Land at NGR 317450 110777 at Tickle Penny, Clayhidon, Devon

- 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 Clifford Hillier, Miss Annabelle Hillier, Miss Phoebe Hillier & Miss Amber Hillier against an enforcement notice issued by Mid Devon District Council.
- The Enforcement Notice (EN) was issued on 29 October 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, unauthorised development on the Land comprising the laying of a concrete base and construction of block pillars and a block tower in the approximate position shaded green on the attached plan.
- The requirements of the notice are: 1. Dismantle each of the block pillars and the block tower; 2. Break up the concrete base; 3. Permanently remove all material arising from steps 1 and 2; 4. Restore the Land to its former condition.
- The period for compliance with the requirements is six (6) months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

Decisions

Appeal A

1. The enforcement notice is quashed.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Appeal A – The Notice

3. As well as alleging a material change of use to a mixed use for agriculture and the storage of building materials, the EN also refers to the siting of a shepherd's hut and a motorhome. However, the term 'siting', which means placing, does not clarify that development may be involved. The siting/stationing of a shepherd's hut (usually a caravan which externally this hut appears to be) or a motorhome normally constitutes a use of land. The EN does not specify what the Council considers the shepherd's hut, or the motorhome are being used for that may constitute a breach of planning control consisting of a material change of use. Consequently, the alleged breach is not clear. It maybe that the Council had in mind they are simply being stored there and that is what adds to the material change of use of the land. However, on its face the EN is not clear.
4. Moreover, whilst the alleged breach refers to a mixed use which includes agriculture, the Council's statement refers to no agricultural activity taking place on the land. If that is the case, what is alleged to be taking place does not match what the Council says it believes is occurring on the land. Moreover, for a breach of planning control consisting of a material change of use of land, the requirements of an EN should require that unauthorised use to cease. The EN does not currently compel the mixed change of use to cease. The potential consequence of this omission under s173(11) of the 1990 Act, if the EN was upheld in its current form, could mean an unconditional planning permission being granted for a mixed use including the storage of building materials on the land once the EN had been complied with.
5. In addition, notwithstanding the appellants case that the shed is a mobile structure, as it is not a caravan it might involve operational development. If that is in fact the Council's view, which again is not clear from the term 'siting', the EN needs to clearly also attack operational development and thus refer to the four-year rule. That clarity and much shorter period than ten years related to changes of use, could have affected whether the appellants submitted a further ground of appeal.
6. With the ambiguities referred to, I have considered whether the EN could be corrected and varied. However, correcting the alleged breach at this stage is not possible because it is not clear what the Council considers has taken place. Changes could also fundamentally affect the case the appellants may have wished to put, included the possibility of different grounds of appeal. Moreover, adding another step to cease the alleged unauthorised use of the

land would involve expanding the requirements of the EN which could also go to the heart of how the appellants may have wished to appeal.

7. There are too many uncertainties and defects. I am not able to use my powers of correction and variation under s176(1)(a) of the 1990 Act since injustice would be caused to both sides were I to do so. The EN is invalid and will be quashed. The grounds of appeal made do not therefore fall to be considered. I shall take no further action under Appeal A. The Council may seek to rely on the second bite provisions under s171B(4) of the 1990 Act to take enforcement action again, if it is considered expedient to do so.

Appeal B

8. Under legal grounds of appeal, such as those under grounds (c) and (e), the burden of proof falls on the appellants to make out their case.

Ground (e)

9. Despite concerns raised about the addresses used by the Council for the main appellant and his three daughters, it has not been made out that there is anyone else who should have been served with the ENs. Moreover, all those persons have made an appeal and were thus clearly aware that the ENs had been served and their rights of appeal. Consequently, even if there was an address irregularity, I can see no substantial prejudice to the persons involved. On this basis, the ground (e) appeals fail.

Ground (c)

10. The appellants accept that the tower and pillars constitute development which requires regularisation. I agree. As for the concrete base, it is the case that Schedule 2, Part 6, Class A of the GPDO grants planning permission for certain development on agricultural units including engineering operations. However, they must be reasonably necessary for the purposes of agriculture within that unit. The hardstanding created is a considerable size. There is no information what that large area would be used for to show that it is reasonably necessary for agricultural purposes within the relatively limited size of this unit. The appellants have not made the case out that the GPDO has granted planning permission for the concrete base. It clearly constitutes operational development which requires planning permission. In the absence of that, as a matter of fact and degree, a breach of planning control has occurred.
11. In view of the above, the ground (c) appeal must also fail.

Ground (f)

12. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. The notice alleges the laying of a concrete base and the construction of block pillars and a tower. The steps require the base to be broken up, the pillars and the tower to be dismantled and all such materials to be removed and the land put back to how it was. As such, the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its condition before the breach took place. The steps require no more and no less. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control.

13. It is noted that the appellants set out a background of contact with the Council before any work took place and that they intend to submit a planning application. I note too that the Council refused a planning application for a multipurpose agricultural building including livestock housing, farm workshop and storage (revised scheme) which was refused earlier this year. However, these matters do not show there has not been a breach of planning control for the development that has been built.
14. In the absence of a ground (a) appeal, there is no obvious alternative development for me to consider, other than full compliance with the EN.
15. In view of the above, the ground (f) appeal must also fail.

Conclusion

16. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR