
Appeal Decision

Site visit made on 14 January 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/G5180/C/19/3231501

Land east of Green Cedars and East Hall Cottage, East Hall Road, Orpington BR5 4EZ

- 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 Colin McCarthy-Stewart against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered L15 18/9/4072 18/00410/CHANGE, was issued on 24 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural land to use for the stationing of a motorhome for storage and residential purposes.
 - The requirements of the notice are:
 1. Cease the use of any part of the Land for the stationing of the motorhome for storage and residential purposes.
 2. Remove from the land the vehicle and any associated equipment brought on to the land for the purpose of that use.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) 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.

Preliminary Matters

2. The Enforcement Notice was served on the previous owner of the land, rather than the current owner. The copies of the notice were therefore not served, as required by section 172. However, s176(g) gives me the power to disregard non-service, provided that the appellant has not be substantially prejudiced by the failure to serve him. As the owner has appealed and has been able to make written representations, he cannot be said to be 'substantially' prejudiced.

The appeal on ground (b)

3. This ground of appeal is that the matter stated in the notice which may give rise to the breach of planning control, has not occurred. The burden of proof lies with the appellant, and the test of evidence is on the balance of probabilities.
4. At the time of my site visit the motorhome was present on the site, with various items visible on the grass around it. The rest of the land was laid to grass and had the appearance of a field. The site is gated, has a letter box and name plate. The Council's enforcement officer has observed the motorhome on

the site on numerous visits between June 2018 and May 2019, a period of time leading up to the serving of the notice. On one such site visit, it is stated that a female person was residing within the motorhome, and the enforcement officer was informed that the residential use was only temporary. The planning history of the site indicates that the most recent permission was granted in 1974 for the reclamation of the land for agricultural use. As such, the use of the motorhome for residential purposes cannot be ancillary to the lawful use of the site.

5. The appellant states that the breach has not occurred as a matter of fact, as the vehicle is not being used for residential purposes or for storage. Neither he, nor his family members, have any need to live on the land, and have residences elsewhere. However, the appellant has provided no specific evidence to demonstrate that the motorhome was not being used for residential purposes in the period leading up to the enforcement notice being served.
6. The appellant also maintains that the land is in mixed residential and equestrian use, rather than an agricultural use, and therefore no change of use has taken place. The evidence for this is said to be a covenant on the land from 1918. A covenant is a private matter and does not indicate a land use in planning terms. I also note that the covenant predates the 1974 permission. Furthermore, the Council's evidence indicates that the covenant states '*in the event of the said land ... at any time in future being used for purposes as a building estate ...*'. It does not therefore indicate a current land use but was concerned with possible future uses. I am therefore not satisfied that there is evidence that the land has a lawful residential or equestrian use.
7. The very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof. These factors lead me to conclude, on the balance of probability, that there has been a material change of use of the land from agricultural land to use for the stationing of a motorhome for storage and residential purposes.
8. The appeal on ground (b) therefore fails.

N Thomas

INSPECTOR