



Appeal Decision

Site visit made on 19 February 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2020

Appeal Ref: APP/F0114/C/19/3235416, 3235417 & 3235418

Unregistered caravan, Parcel 7152, Gloucester Road, Swainswick, Bath

- 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 appeals are made by Mr Chris McKenty, Mrs Janice McKenty and Miss Elizabeth McKenty against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice was issued on 17 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of land from agriculture to a mixed use of agriculture and residential through the siting of a mobile home and wooden buildings for residential purposes.
 - The requirements of the notice are:
 - Requirement 1: Stop using the land for residential purposes.
 - Requirement 2: Permanently remove the mobile home and raised timber decking from the land (marked as 'A' in its approximate location on the attached plan and marked as 'A' on attached photo 1).
 - Requirement 3: Permanently remove the wooden building from the land (marked as 'B' in its approximate location on the attached plan and 'B' on attached photo 2).
 - Requirement 4: Permanently remove the wooden building from the land (marked as 'C' in its approximate location on the attached plan and 'B' on attached photo 3).
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) 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 appeals 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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Decision

1. It is directed that the enforcement notice is corrected by:
 - Deleting photographs 2 and 3 from the notice;
 - Deleting from section 5 within Requirement 3, the words "and 'B' on attached photo 2";
 - Deleting from section 5 within Requirement 4, the words "and 'B' on attached photo 3";
2. and varied by:
 - Deleting from section 5, Requirement 4.
3. Subject to the corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

4. Three photographs are referred to within the requirements at section 5 of the notice. Those relating to the 2 buildings have been labelled incorrectly. Notwithstanding this, the appellants have understood the allegation and the requirements of the notice. Indeed, they have pointed out the discrepancy within their statement. The Council has provided replacement photographs which are labelled according to the annotation on the notice plan.
5. Given that the positions of the wooden buildings are correctly shown on the plan to a reasonable degree of accuracy, to save confusion I consider that it would be clearer to simply delete the reference to the photographs with the errors. They are not essential to the understanding of the notice. I can do this under the powers given to me by s176(1)(a) without causing injustice.

The Appeal on ground (d)

6. Under this ground, it is necessary for the appellants to demonstrate, on the balance of probabilities, that no enforcement action could be taken in respect of the alleged breach of planning control. The allegation in this case is that a material change of use has taken place and not the carrying out of operational development. The buildings referred to in the allegation are being enforced against as, in the view of the Council, they have facilitated the change of use of the land by providing necessary facilities. Although both buildings are considered by the Council to be used as a part of the residential use, this is as sleeping accommodation (building B as shown on the plan) and also to house white goods such as freezers, fridges and a washing machine (building C as shown on the plan). Neither building is alleged to be a separate dwelling.
7. Section 171B of the Act sets out the time limits for taking enforcement action. In relation to the making of any material changes in the use of land, the time limit is 10 years. The appellants need to demonstrate that the use as alleged has continuously taken place for a 10-year period before the notice was issued.
8. The appellants do not dispute that the caravan has been brought onto the site and used for residential occupation for less than 10 years. The response to the Planning Contravention Notice (PCN) under the provisions of s171C of the Act, indicates that it was first occupied in July 2015. Furthermore, the building indicated in position 'B' on the notice plan has only been used residentially since December 2015 or November 2015 according to the PCN. The other wooden building, building 'C' the appellants say, has been on site since 2003 or 2004. Whether or not that is the case, it is clear that the use for residential purposes as alleged as part of a mixed use, did not commence more than 10 years prior to the date of the notice.
9. The appeal on ground (d) therefore fails.

The Appeal on ground (f)

10. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires the cessation of the residential use of the land, the removal of the mobile home along with the decking that enables access to it and also the removal of the wooden buildings.
11. The notice alleges a mixed use and is under-enforcing by only requiring the cessation of one aspect of that use, the residential element. Although there

was no obvious sign of agricultural activities, I did see buildings to the south-east of the mobile home which appear to have a clear agricultural function. Further still to the south-east I saw an old tractor and some 'pig arcs' which is consistent of the appellant's description of the use of the site.

12. The Council has referred to the Murfitt¹ case. This held that a notice alleging a material change in use can require the removal of works that facilitated the unlawful use. In that respect, there is no dispute that it is acceptable to seek the removal of the decking which has enabled access to and therefore residential occupation of the mobile home.
13. The building shown in position 'B' on the notice plan was brought onto the site in November 2015 and occupied residentially from December 2015. There may have been an intention to use this building as an office. However, given such a short space of time between this being erected and then being occupied, it seems probable that it has been a fundamental element of the residential occupation of the site which had commenced a few months earlier. Although if looked at as purely operational development the building would be considered lawful having been in place for more than 4 years prior to the issuing of the notice, it appears on the balance of probabilities to have been constructed to facilitate the residential element of the use.
14. The aerial images of the site are not certified by the agency that took them. They have been downloaded from 'Google Earth' and the stated date of 20 December 2009 may not be reliable particularly as all vegetation appears to be in full leaf. It seems unlikely that they will have been taken during the winter. However, it is accepted by the Council that the wooden building in position 'C' on the notice has been on site since 2003. This is consistent with the PCN. That was prior to the residential use of the site and so that building was not erected with the sole purpose of facilitating the residential use. The appellant has stated that this was used for housing refrigerators to store finished pork and beef from the agricultural activity which seems a credible explanation. Whilst this building may have subsequently been used to support the residential occupation of the site it seems probable that it continued to be jointly utilised for both elements of the mixed use. Even if the meat products may have reduced over time due to the decrease of the farming activity, it is reasonable for future agricultural activities to utilise the building and the electricity supply that is housed within it.
15. I therefore consider that the steps required exceed what is necessary to achieve the purpose of the notice. The building in the position marked 'C' should not be required to be removed from the site. The appeal on ground (f) therefore succeeds to that extent.

Conclusion

16. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation.

A Harwood

INSPECTOR

¹ Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598