



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: 19 March 2020

Appeal Ref: APP/F0114/C/19/3235502

Land at Waterbrook, Parcel 4324, Limeburn Hill, Chew Magna BS40 8QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jonathan Martin against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice was issued on 16 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 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 from the land (marked as 'A' (mobile home) in its approximate location on the attached plan and marked as 'A' (mobile home) on attached photo 1.
 - The period for compliance with the requirements is Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) 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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Decision

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

Preliminary Matters

2. As set out above, the fee was not paid for an appeal on ground (a) and the deemed planning application. The numerous references within the appellant's statement to planning merits will not therefore affect my decision.

The Appeal on ground (d)

3. The main issue is whether on the date of the notice, no enforcement action could be taken with respect to the development enforced against. Section 171B of the Act sets out the time limits for taking enforcement action. In relation to the making of any material change in the use of land, the time limit is 10 years. The onus is upon the appellant to demonstrate that the use has continuously taken place for a 10-year period before the notice was issued. It is necessary to show that the use continued throughout the 10 year period to the extent that the local planning authority could have taken enforcement action at any time.

4. In this case, the development as alleged is the mixed-use of the land for agriculture and the siting of a mobile home for residential purposes. The appellant's submissions refer to the "business" having collapsed in 2015 although it is not suggested that the description of the mixed-use including agriculture is incorrect. The appellant refers to 2 pigs currently being on site. Ground (b) has not been pleaded, that the matters alleged have not occurred. I will therefore continue on the basis that there is no dispute over the description of the use as set out on the notice.
5. The appellant states that he has owned the appeal site since September 2007 and that he started to reside in a caravan "shortly after". After 5 years, a different caravan was brought onto the site and that is the one that he currently resides in. When I visited, I was shown the position where the original caravan was sited. In my view, the changing of the caravan to the current mobile home would not have been fatal to proving the 10 year period. The current and previous location would be within the same planning unit. Furthermore, the occupation of a caravan or mobile home¹ relates to the use of land within the overall planning unit rather than its specific position.
6. Very little detail is given about the nature of the appellant's occupation of the original touring caravan. The submitted statutory declaration refers to it having been brought to site "ancillary to the pig farm" which implies that it was at that time used as part of the farming enterprise. There is a clear distinction between occasional overnight stays due to animal husbandry requirements in a caravan otherwise used for the lawful purposes of the land, which may not be of sufficient duration to involve a breach of planning control, compared with continuous use as a permanent home. In order to be successful on this ground of appeal the appellant needs to substantiate that occupation of the caravan was as a permanent home.
7. The mobile home that replaced the touring caravan was positioned on the site in 2014 and the appellant refers to this being "still in place and is still my only residence today". This is a much clearer statement of the mobile home being the appellants permanent home. There is also history of planning enforcement investigations at the appeal site. These included the service on 22 January 2014 of a Planning Contravention Notice (PCN) which alleged "the unauthorised stationing of a mobile home for residential use on agricultural land". This was responded to by the appellant's partner. The use of the land was stated as being an agricultural smallholding with straw bale structure forming a residential dwelling. The Council states that an enforcement notice was issued in relation to the straw bale house.
8. Question 9 of the PCN asked "Is the mobile home on the land currently being used for residential purposes? If not, for what purpose is it currently being used?" The response was "no - currently used for ancillary operations associated with the agricultural smallholding. Occasional showering and human shelter in severe weather."
9. From the evidence provided it therefore appears less than probable that prior to 2014, the residential occupation of the original caravan on the site was anything more than occasional. When in 2014 the mobile home was positioned on the site, there is a very clear statement by the joint landowner that the

¹ Meeting the criteria laid down in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968 (as amended)

mobile home was not being occupied residentially on a permanent basis. That situation may have changed soon afterwards, but the appellant has not demonstrated any 10 year continuous period of residential occupation of any caravan or mobile home on the appeal site.

10. The appeal on ground (d) therefore fails.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

A Harwood

INSPECTOR