
Appeal Decision

Site visit made on 6 November 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/X1118/C/19/3228053

Land on the north side of Rock House Farm, Castle Street and the west side of Bowhay Lane, Combe Martin, Ilfracombe, Devon EX34 0JG

- 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 Brian Lee Lethaby against an enforcement notice issued by North Devon District Council ('the notice').
- The enforcement notice, numbered ENF9752, was issued on 5 April 2019.
- The breaches of planning control as alleged in the notice are: Without planning permission and within the last 10 years, unauthorised material change of use of the Land by virtue of the storage of caravans and non-agricultural vehicles. Without planning permission and within the last 4 years, unauthorised operational development consisting of engineering works to terrace the Land along with the erection of retaining walls and a timber fence.
- The requirements of the notice are to: (1) Cease the use of the Land for the storage of caravans and non-agricultural vehicles; (2) Remove all caravans and non-agricultural vehicles from the Land; (3) Remove all retaining walls and the timber fence from the Land; (4) Restore that part of the Land which has been terraced to its condition before the development took place; and (5) Remove all debris and other rubbish resulting from complying with Steps 1-4 from the Land.
- The period for compliance with the requirements is 3 months from the date that the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with variation as set out in the Formal Decision below.

Procedural Matter

1. Amongst its reasons for issuing the notice, the Council cited the highways implications associated with the use of the land. These included the limited width and poor alignment of Comers Lane and Bowhay Lane and the poor level of visibility available to drivers at the junction of Comers Lane and the A399. The Council has since confirmed that it would not continue to defend this reason for issuing the notice. This reason has played no part in my decision.

Ground (a) and the deemed application

Main Issues

2. The main issues in the appeal are:
 - The effect of the development on the character and appearance of the area; and
 - The effect of the development on the historic environment.

Reasons

Character and Appearance

3. The appeal site lies on a steeply sloping hillside on the north side of Combe Martin, a village with a linear form following the course of a stream inland from the sea. The site has been described as consisting of western and eastern enclosures and, for the sake of clarity, I shall refer to them in this manner. Although I have not been given a copy of a plan showing this, the Council states that the site is within an Area of Outstanding Natural Beauty (AONB) and Heritage Coast (HC). This has not been challenged by the appellant, so I have taken it to be the case.
4. A track runs down the eastern enclosure from Bowhay Lane to a levelled hardstanding at the lower end of this part of the land, both of these are surfaced in loosely-bound material. In addition to a number of vehicles, there were some sheds and timber on the levelled area when I visited. This hardstanding area appears to be the same as that allowed at appeal¹. A blockwork wall retains the western end of this hardstanding, on top of which a timber fence has been erected.
5. The track divides the eastern enclosure into two parts. The smaller of the two has been remodelled, with its upper area having been subject to excavation and two terraces retained by blockwork walls have been created on the land below. The larger area has been subject to considerable engineering operations that have led to the creation of a series of large terraces.
6. The bulk of the western enclosure is set to grass and has a small wooden building in it. A small area at its upper end is enclosed by a corrugated fence, where there is a further small timber building.
7. A line of dwellings, Danycraig Cottages, abuts the west boundary of the western enclosure and a large dwelling with outbuildings and an extensive garden, Southdene, lies immediately to the north of this part of the site. To its south, the site appeared to be bounded by the gardens to dwellings set some distance away, and there is a distinct gap between the site and the nearest buildings to the east.
8. The Council states that the site lies outside the village boundary, though I have not been given a copy of a plan showing this. As this has not been challenged by the appellant, again I accept this to be the case. Notwithstanding the nature of development on the hillside north of this part of the village, the site appears outside of the built form of the village and reads as part of its flanking countryside. I do not find it to be a residential area, nor is it effectively surrounded by residential properties.
9. The National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. This is reflected at the local level in the terms of Policies DM08A and ST14 of the North Devon and Torridge Local Plan 2011-2031, adopted October 2018, (NDTLP). The former policy also requires development to maintain the character and distinctive landscape qualities of the HC.

¹ Appeal reference: APP/X1118/C/10/2125264

10. Whilst I could not view the terraces from within the built form of the village, including from the church, they are clearly seen from across the valley, from public vantage points on the road that runs from Combe Martin to Berrydown Cross. Although the landscape and development at the edge of the village here is varied, overall its form, whether in terms of field patterns or the layout of buildings, follows the fall of the hillside from north to south. The terraces that have been formed, trend east to west and cut across the prevailing form.
11. The appellant agrees that those formed to the east of the track are inappropriate and confirms his intention to remove them. Even though those to the west of the track have grassed over, these large terraces are still very conspicuous in the landscape and cause significant harm to it.
12. There have been changes at the edge of the village over the years, as evidenced in the Google Earth images submitted by the appellant. However, these changes are not such that the terraces that have been formed are compatible with the landscape. That the terraces allow for cultivation, rather than the grazing that was all that was possible before their creation, does not outweigh the harm that I have identified. I saw that the property to the north of the site, Southdene, cuts across the hillside in a similar manner. However, this does not justify adding further east-west elements into this landscape in a harmful manner.
13. The appellant has made it clear that he does not seek permission for the storage of caravans on the site, but wishes to use the land for domestic purposes associated with a number of dwellings at or near Rock Farm. However, this does not form part of the alleged breaches of planning control. It is these breaches that my decision must address. This appeal cannot be used to gain permission for another use in a manner that would circumvent the democratic process by denying interested parties the opportunity to have their say on the matter. Therefore, I give very little weight to these arguments.
14. The evidence before me shows that the use alleged in the notice has occurred. Given its prominence in the landscape, the use of the land for the storage of caravans and non-agricultural vehicles has a harmful effect on the landscape. As the land is agricultural, it would have been unreasonable of the Council to seek to preclude the storage of agricultural vehicles from it. However, I note that the terms of NDTLP Policy ST07 limits support for development outside settlement boundaries to that which necessarily need a rural location.
15. The underlying aims of the policy are set out in its supporting text, and include avoiding compromising landscape quality, and that great weight will be given to conserving landscape and scenic beauty in the AONB. Sufficient justification has not been provided to show that the use of this part of the land for the storage of non-agricultural vehicles passes the test of necessity in this policy. Therefore, the reference to non-agricultural vehicles in the notice is justified, even on the levelled area at the bottom of the site to which views are limited.
16. The raising of the land to the west of the previously allowed hardstanding, together with the associated retaining wall and timber fence, also has to be subject to the test in Policy NDTLP ST07. Again, I have not been provided with sufficient evidence to illustrate its necessity in this rural area and, therefore, find it to be contrary to its terms.

17. The erection of fences and other structures relating to future grazing use of the land is not a matter for this appeal. Should any of these require planning permission, it would be for the Council to assess on their individual merits. I have also taken into account that other properties would continue to use the access in future and that the appellant is willing to provide additional soakaways on the land. However, none of the above outweigh the harm that I have identified.
18. For the above reasoning, my finding on this main issue is that there would be harm to the character and appearance of the area contrary to the terms of Policies ST14, DM08 and ST07 of the NDTLP and those paragraphs of the NPPF relating to landscape protection within the AONB and HC.

Heritage Assets

19. The western enclosure lies within the Head Town Conservation Area (HTCA), a designated heritage asset. The hedge separating this enclosure from the eastern one forms the boundary of the HTCA and, therefore, the latter lies within its setting. I am, therefore, required to pay special attention to the desirability of preserving or enhancing the character or appearance of the HTCA in accordance with Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990. This requirement is reflected in NDTLP Policy DM07.
20. The evidence shows that the site lies within the Combe Martin Field System, which has medieval origins. NDTLP Policy CMA04 seeks to protect its historic landscape character and setting. The nature and form of the field system can be appreciated from the public viewpoints across the valley that I have already referred to. The County Historic Environment Team suggest it is of regional importance, and I find this to be a non-designated heritage asset².
21. Albeit that the appeal site has been modified over the years, including through mining-related activities, it still reads as being part of the field system when seen from across the valley.
22. Paragraph 192 of the Framework requires local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets, including CAs, and the desirability of development making a positive contribution to local character and distinctiveness. Paragraph 193 adds that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. As heritage assets are irreplaceable, any harm should require clear and convincing justification.
23. For the reasons given above, the storage of caravans and non-agricultural vehicles on the land would have a significantly adverse effect on the character and appearance of the HTCA and its setting. The terracing of the eastern enclosure has a significantly harmful effect on the character of the field system through the introduction of strong east-west features in this landscape that is defined by its north-south form. This terracing also detracts from the setting of the HTCA.

² Using the definitions in Annex 2: Glossary of the National Planning Policy Framework

24. This harm is 'less than substantial', in the words of paragraph 196 of the Framework. This paragraph then requires decision-makers to weigh the harm against any public benefits. That the appellant would continue to assist in researching local mining history and the increased cultivability of the land can be seen as being public benefits. However, the former is not dependent on the works that have been undertaken and the latter carries little weight. As such, whether taken individually or cumulatively, they do not outweigh the harm that I have identified. I do not find that the use of the land by the occupants of nearby properties for amenity purposes would equate to a public benefit.
25. On this main issue, I find that the proposed development would fail the statutory test to preserve or enhance the character or appearance of the Head Town Conservation Area, and its setting, reflected in NDTLP Policy DM07. The harm to the Combe Martin Field System would be contrary to NDTLP Policy CMA04.

Conclusion

26. For the above reasons, and having taken all other matters into account, the appeal on ground (a) is dismissed.

Ground (f)

27. Although the requirements of the notice do not recite the previous use, this is not fatal to it. In any event, the first of the reasons for issuing the notice make it clear that the use of the land is agricultural. Its reference to non-agricultural vehicles is justified for the reasoning I have given in the Ground (a) appeal, above.
28. Matters pertaining to both the terracing to the west of the driveway in the eastern enclosure and the retention of the retaining wall and timber fence have been addressed in my findings on the Ground (a) appeal. Both cause harm and neither accords with development plan policies.
29. The steps that the notice requires to be taken to remedy the breach are necessary, reasonable and proportionate and do not exceed what is required. The retention of the terraces to the west of the track and the retaining wall and timber fence, together with the continued use of the land for non-agricultural vehicles, would result in the perpetuation of the harm that I have identified. The removal of those matters of operational development and the cessation of the use is necessary. As such, the appeal under Ground (f) is dismissed.

Ground (g)

30. The requirements of the notice are to be complied with within 3 months of it coming into effect. Given the steeply sloping nature of the land, carrying out the operational requirements of the notice would be likely to be very problematic during the winter months. I agree that the period for compliance with the requirements of the notice, in this regard, should be extended.
31. Having said this, I am not convinced that 12 months is required. I am of the view that a 9-month period, which would include the spring and summer months, would be sufficient.
32. However, I see no reason to vary the period for compliance with regards to the use of the land, which is not weather-dependent.

33. On this basis, the appeal partially succeeds on ground (g) and I will vary the notice accordingly.

Formal Decision

34. The appeal succeeds on ground (g) and it is directed that the enforcement notice be varied as follows: delete all of the text in section 5, when you are required to act, and substitute therefor by the following text:

“For the operational development, 9 months as a period of compliance and the material change of use of the land, 3 months as a period of compliance.”

35. Subject to the above variation, the appeal is dismissed on ground (a) and (f) and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Roy Curnow

INSPECTOR