The Planning Inspectorate

Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal A Ref: APP/D1265/C/19/3239978
Appeal B Ref: APP/D1265/C/19/3239979
Land at Champernhayes Corner, Champernhayes Lane, Wootton Fitzpaine DT6 6DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Jonny Hoskins against an enforcement notice issued by Dorset Council ('the notice').
- Appeal B is made by Mrs Suzanna Hoskins against an enforcement notice issued by Dorset Council.
- The enforcement notice, numbered WD/ENF/18/00234, was issued on 19 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land by the stationing of a mobile home, touring caravan and yurt on agricultural land for unauthorised residential occupation.
- The requirements of the notice are : (1) Cease the unauthorised use of the mobile home, touring caravan and yurt for residential accommodation; (2) Permanently remove from the land the unauthorised mobile home, touring caravan and yurt; and (3) Permanently remove from the land any items used in connection with the unauthorised residential use of the land, including the wooden picnic table, horse box, wooden pallets, wooden shed (for the avoidance of doubt, these items identified in photographs attached to the notice).
- The period for compliance with the requirements is within 9 months from the date this enforcement notice comes into effect.
- The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

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

Procedural Matter

2. Given that only ground (f) has been pleaded in both appeals, a physical site visit was not necessary as I was not considering the planning merits of the case. The parties were consulted on this and agreed that determining the appeal on this basis would not be prejudicial.

Reasons

3. From the evidence before me, including the appeal decision of 11 June 2018[1], the lawful use of the land is for horticulture. The appellants' case is based on the assertion that certain items are essential for the running of the horticultural business and to remove these from the land would be excessive and, therefore requirement (iii) of the notice should be deleted. To this end, reference is made

[1] APP/F1230/W/18/3203500

to an email from the Council[2] that states the only items that should remain on the land are those "legitimately required for the running the business".

4. In this regard, the appellants' statement specifically refers to a table and horse box and items shown in photograph IMG_1264, which includes, amongst other things, a picnic table, horse box, touring caravan, wooden shed and miscellaneous equipment.

5. The purpose of the notice is to remedy the breach of planning control, that is to say to cease the residential use of the land.

6. It is for the appellants to demonstrate that the items referred to in requirement (iii) were put there for purposes related to the lawful use of the land. Here, the evidence put forward in support of the claim is scant and does not demonstrate this. The items referred to in requirement (iii) and shown in photograph IMG_1264 are of a nature and scale that suggest their use in connection with the unauthorised residential use of the land and not the horticultural use before the breach occurred. Section 173(4) of the 1990 Act allows an enforcement notice directed against the use of land to include requirements to remove items that facilitate the unauthorised use. Thus, requirement (iii) falls within the scope of the notice.

7. It would be excessive to require the removal of these items if they were ancillary to the lawful use of the land, as no purpose would be served through the removal of items that could be returned to the land after compliance with the notice. However, it is for appellants to demonstrate that these items are ancillary to the horticulture use and this has not been done in the submissions.

8. Given the purpose of the notice, no substantive case has been made to show that lesser steps would achieve the purpose behind the notice's requirements. Therefore, I find that the requirements in the notice are not excessive but are proportionate to remedy the breach alleged in the notice.

Conclusion

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

Roy Curnow

INSPECTOR

[2] Dated 17 October (no year shown)