



Appeal Decisions

Site visit made on 16 June 2020

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Appeal A Ref: APP/X3540/C/20/3247258

Appeal B Ref: APP/X3540/C/20/3247259

Land at 98 Tangham Cottages, Capel St Andrew, Woodbridge, Suffolk IP12 3NF

- The appeals are 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 Roy Drake and Appeal B is made by Mrs Abigail Myers-Drake against an enforcement notice issued by East Suffolk Council.
 - The enforcement notice was issued on 17 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of the land and buildings from agriculture to a business, tourism and residential use, namely a therapy room, sauna, jacuzzi/hot tub and holiday let accommodation.
 - The requirements of the notice are:
 1. Permanently cease the use of the Land (shown edged red on the attached plan) and buildings (shown edged in blue on the attached plan) for business and tourism use namely a therapy business, sauna and hot tub/jacuzzi for business/commercial use and holiday let accommodation
 2. Permanently remove from the Land and buildings all items brought on to the Land in connection with the business and tourism use, namely the therapy business and holiday let business
 3. Permanently cease the use of the sauna and jacuzzi/hot tub for business, tourism and residential uses
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)[a], [b], [f] and [g] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is an identical appeal except that there is no ground (a).
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Decision

1. Appeal A and Appeal B are dismissed, and the enforcement notice is upheld with a correction and a variation.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended (Appeal A).

Procedural Matters

3. Suffolk Coastal District Council and Waveney District Council have merged to form East Suffolk Council. However the Suffolk Coastal District Local Plan Core

Strategy and Development Management Policies (2013) (the Local Plan) remains the Development Plan for the appeal site and the surrounding area.

4. The Suffolk Coastal Local Plan has been published but has yet to be examined and found sound. It only attracts limited weight in my determination of the appeals as a further material consideration.

The Notice

5. The appellants consider that the plan which accompanies the notice is incorrect because it does not define the whole of their property at 98 Tangham Cottages. The notice plan identifies two pieces of land and the buildings within them. Within the close vicinity of both pieces of land there are a pair of cottages, Nos 98 and 99 Tangham Cottages. No. 98 is occupied by the appellants, which they say is also their property.
6. They refer to case law in the form of *Burdle v Secretary of State for the Environment* (1972) 1WR1207 (Burdle) and argue that the whole of their property is a single planning unit in a mixed residential and commercial use where the primary and ancillary uses are not physically and functionally separate.
7. The evidence provided by the appellants points towards a fluctuation in the use of the land and buildings identified in the notice between use by themselves and their families/friends and use by customers of the therapy business including those occupying the holiday accommodation.
8. The Council is satisfied that the plan is correct and compare it to the plan which was used for an application for planning permission by the appellants which shows the two areas in red to identify the planning application site and the rest of the land in blue (Council Ref. DC/18/2396/FUL) (the 2018 planning application).
9. It is a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. In this case, the appellants note physical links between the sites shown on the notice plan and the rest of the land in their control, including services and gates. There is also evidence of a functional relationship arising from the use of the land and buildings as identified on the notice plan by the appellant in conjunction with their occupation of the cottage at No. 98.
10. However, there is nothing before me to suggest that the cottage is being used as anything other than a single dwelling and the appellant is not arguing that the business/tourism use is ancillary to that use, as was part of the argument in *Burdle*. On that basis, I find that there is insufficient physical and functional connection between the areas identified on the notice plan and the cottage to require that the notice should relate to the whole of the appellant's property.
11. The appellants also argue that the description of the allegation as use as a tourism and business use is neither precise nor accurate. However, taking the normal meaning of these words and the commercial nature of both the holiday lets and the therapy activities I find that use of the term 'use for tourism and business' accurately describes the use of the land and buildings identified in the notice.

12. It follows that I do not need to exercise my powers of correction and amend the plan attached to the notice or the description of the breach of planning control as it relates to a business and tourism use.

Reasons

Ground (b)

13. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
14. The appellants argue that the last use of the site is not agricultural land and, on this basis, the unauthorised change of use has not occurred. Notwithstanding the evidence before me regarding the previous lawful use of the land, it is not necessary for the notice to state what the material change of use is from. Consequently, I can correct the notice by removing the reference to the agricultural use. On this basis this element of the ground (b) appeal falls away.
15. By their own admission the appellants accept that the Latvian Cabin, the Kota Lodge, sauna and jacuzzi/hot tub have been used for holiday letting guests and that the Healing Hut is used for the therapy, fitness and well-being business. Therefore, there is no dispute that the matters to which the notice relates have occurred.
16. For the reasons set out above the appeals under ground (b) fail.

Ground (a) and the Deemed Planning Application (DPA) (Appeal A only)

17. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted. The DPA derives its terms directly from the words of the allegation, those being the matters stated in the notice as constituting a breach of planning control. Therefore, and taking account of the fact that I have amended the allegation, the DPA if granted would be in respect of 'change of use to a business, tourism and residential use, namely a therapy room, sauna, jacuzzi/hot tub and holiday let accommodation'.
18. There is no dispute between the parties that the buildings which are referred to in the notice are lawful. Therefore, in contrast to the appeal decision relating to the 2018 planning application (Appeal Ref. APP/J3530/W/19/3224772) (the 2019 appeal) which was dismissed, this appeal does not relate to operational development.

Main Issues

19. The Council sets out its reasons for issuing the notice as the outcome of the 2018 planning application/2019 appeal and the effect of the development on Sandlings Special Protection Area (the SPA) with reference to relevant policies and proposals in the Development Plan.
20. The Inspector in the 2019 appeal defined the main issues of that appeal, as well as the effect on the SPA, as the effect on the character of the surrounding area, whether the proposal is in a suitable location and the effect of the proposal on the living conditions of neighbours. Given that the Council's

reasons for serving the notice are based on the outcome of the 2018 planning application/2019 appeal, the same main issues apply to the current appeal.

Character

21. The appeal site lies beside one of the unsurfaced tracks serving the dwellings and other uses in Rendlesham Forest. The surrounding area is characterised by the dense cover of trees immediately adjacent to the track which provides a sense of peace and serenity interspersed by the sounds and movement of wildlife. The dwellings are sporadically located and save for the movement of traffic along the tracks for access and services, their presence does not significantly affect the overall character of the area.
22. The Forest Centre and its associated car park are located a significant distance from the appeal site. However, this facility attracts walkers, horse riders and cyclists who are then able to use the tracks and footpaths to enjoy the forest. Notwithstanding the appellant's comment that the track is not part of a designated footpath, route or trail, and it is not a public footpath or bridleway, there is nothing to prevent visitors to the forest from using the track.
23. The use of the appeal site for business, tourism and residential purposes is not compatible with the character of the surrounding area. I agree with the previous Inspector that even though traffic movements may be low those movements are out of character with this area of the forest. Furthermore, both the comings and goings associated with visitors arriving and departing from the site on a regular basis with luggage etc and the customers using the therapy room independently of the holiday accommodation would detract from the peaceful character of the area enjoyed by passing walkers etc.
24. There is no evidence before me that further landscaping of the site as suggested by the appellant, which could be secured by planning condition, would mitigate the type of harm to the character of the area derived from the use which I have found.
25. I conclude that the use of the site has a harmful effect on the character of the surrounding area. The development is therefore contrary to Policy DM21 of the Local Plan which seeks to ensure that development relates well to the character of its surroundings.

Location

26. The Council's strategy is to ensure that opportunities to maximise the economic potential of the rural areas are in accordance with its Settlement Strategy, which supports development which is well-related to the settlement pattern. Policy SP7 fosters the creation of new employment at settlements in accordance with the Settlement Hierarchy.
27. The site is located deep within Rendlesham forest at a significant distance from Woodbridge and other settlements. There are no shops or services, including bus stops, in close vicinity to the site and the aerial photograph provided by the appellants shows its isolated position in terms of both other dwellings and access. The access track serving the site is unsurfaced and does not benefit from footways or street lighting.
28. Walking or cycling to shops and services would be unlikely to be a desirable option particularly during inclement weather or during the hours of darkness.

Furthermore, there are no bus stops in the vicinity of the site, nor have I been provided with information regarding the availability of public transport or its frequency. Consequently, any users of the site would be likely to be heavily reliant on private cars for access.

29. Policy SP1 of the Local Plan seeks to achieve sustainable development through, amongst other things, mitigation and adaptation to the effects of climate change and reducing the need to travel. Policy SP8 of the local plan which deals specifically with tourism also seeks to encourage green tourism and the use of public transport. The reliance which users of the development would place on the use of private cars is at odds with these aims.
30. I conclude that the use of the site for business, tourism and residential purposes is contrary to Policies SP1, SP7 and SP8 and it follows that the site is not suitable for these uses.

Living Conditions

31. The appeal site is one of a pair of semi-detached houses, the other being 99 Tangham Cottages (No. 99). There is mature planting along the boundaries and access to both parts of the appeal site is directly off the access track, well clear of the driveway serving No. 99. The Latvian Cabin is located such that part of the garden to No. 98 provides a degree of separation from the boundary.
32. The Latvian Cabin, the Kota Lodge, sauna and jacuzzi/hot tub provide additional screening from car parking areas and generally the appeal sites are not close to the dwelling at No. 99. Other dwellings in the forest are at a considerable distance from the appeal site.
33. The Inspector for the 2019 appeal did not find that the scheme, which was the subject of the 2018 application, would have a harmful effect on the living conditions of occupiers of neighbouring properties with regard to noise and disturbance. Whilst the Council refers to the impact which the business use will have on the small residential community located in Tangham, there is no evidence to support this argument.
34. I conclude that the use for business, tourism and residential purposes does not have a harmful effect on the living conditions of neighbours. Consequently, the development is in accordance with Policy DM23 of the Local Plan which requires new development to have regard to the impact on residential amenity in relation to noise and disturbance.

Conclusions in relation to matters raised in the 2018 planning application/2019 appeal

35. The Council refers to policies which it regards as relevant to the enforcement notice. The appellant refers to the same and other policies which he regards as supportive of the business, tourism and residential use.
36. Policy SP8 addresses tourism specifically. It acknowledges that tourism is an important part of the local economy and that Suffolk Coastal district possesses a high-quality natural environment. However, it also says that tourism needs to be managed so that it protects the features that make the district attractive to visitors. Policy SP7 is similarly supportive of economic development including

expanding the tourism offer but only where it is compatible with the environmental objectives.

37. The policies in the plan which are supportive of the use for business, tourism and residential purposes are effectively qualified by the need to consider the effect on the environment and the settlement hierarchy in terms of the location of jobs. On this basis as I have found that the development has a harmful effect on the character of the area and that it does not accord with the aims of the Council's settlement strategy, the use for business, tourism and residential purposes does not derive support from these policies.
38. The appellant has also referenced Policy SP6 of the Local Plan, however there is no evidence before me to demonstrate that the development amounts to economic regeneration. Consequently, I do not find this policy to be of direct relevance to the development. Similarly, I do not find Policy DM13 of the Local Plan relevant as this relates to the re-use of redundant buildings in the countryside which is not the case for the buildings to which the notice relates given the appellant's reference to the use of the buildings in connection with No. 98.

Sandlings Special Protection Area (the SPA)

39. The site is surrounded by the SPA, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policies SP14 and DM27 of the Local Plan seek to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development.
40. The Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
41. The Habitats Regulations Assessment (HRA) carried out by the appellant refers to the Suffolk Recreational Disturbance Avoidance and Mitigation Strategy (the RAMS) and a Technical Report which relates to the RAMS. The aim of the HRA is stated as to provide sufficient information to allow an AA to be carried out.
42. Had I been minded to allow the appeal, it would have been necessary for me to consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner.
43. However, I have found that the development does not accord with the local plan when read as a whole. Therefore, whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations. Therefore, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other matters

44. The appellant argues that the development is of a small scale in comparison with existing tourist-related activities in the area including a caravan and camping site. Whilst I accept that the business and tourism uses are small scale they do nevertheless have an adverse impact on the character of the area contrary to planning policy. The caravan and camping site is in another part of the forest and is accessed by a different route, such that it does not affect the immediate vicinity of the appeal site. There is limited information before me regarding the holiday lodges at Staverton Park, Wantisden, thus I am unable to draw a direct comparison between that development and the appeal scheme.
45. The appellant considers that the site constitutes previously developed land (PDL). However, even if that were the case there is no evidence before me to demonstrate that the redevelopment of PDL outweighs the harm that I have found in relation to the character and location of the development.

Conclusion on Ground (a) and the DPA

46. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

47. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
48. Step 1 deals with the requirement to cease the use of the land for 'tourism use'. I have already established that I do not find the use of this term to be unclear and taking its ordinary meaning there is no ambiguity that tourism use would include 'holiday let accommodation'. Furthermore Step 1 refers to holiday let accommodation specifically. To this end, contrary to the views of the appellants I consider that Step 1 does make it clear that the cessation of the residential use of the holiday let is required.
49. The appellants appear to consider that in order to comply with Step 2 of the requirements, the use of the site needs to be limited to agricultural use. However, Step 2 does not require such action.
50. Whilst the reference to the removal of items in connection with the business and tourism use in Step 2 does not include specific examples, the requirements must not purport to prevent an appellant from doing something that he or she is entitled to do relying on lawful use rights. Consequently, Step 2 can only be implemented in so far as it relates to items connected with the unauthorised use. For the same reason Step 3 cannot restrict the use of the sauna and the jacuzzi/hot tub if their use in connection with No. 98 is lawful.
51. Whilst there is a degree of overlap between Step 1 and Step 3, in my view Step 3 clarifies the arrangements for the future use of the sauna and the jacuzzi/hot tub. In that regard there is no need to remove or amend Step 3.
52. The appellants suggest that under-enforcement so as to require cessation of only part of the appeal development could be an option. However, there is no

alternative before me and it follows that nothing short of full compliance with the notice would address the harm in terms of the character and location that I have found under ground (a).

53. It has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons both appeals fail on ground (f).

Ground (g)

54. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short because the bookings for the accommodation involve contractual obligations and relate to specific celebrations. The Council considers that the appellants' request for up to 9 months to comply with the notice as excessive.

55. There is no information in the form of future bookings before me and no substantive evidence to demonstrate the adverse effects that cancellation would have. On this basis I would agree with the Council regarding an extension to 9 months.

56. However, taking account of the view of the Council that it would not be opposed to an increase in the compliance period to 6 months, which was the lesser timescale requested by the appellants, it seems to me reasonable for the compliance period to be extended to 6 months. For these reasons, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

57. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application (Appeal A).

FORMAL DECISIONS

Appeal A Ref: APP/X3540/C/20/3247258; and

Appeal B Ref: APP/X3540/C/20/3247259

58. It is directed that the enforcement notice be corrected in Schedule 3 by deleting the words "from agriculture" and be varied at Schedule 6 by the deletion of '3 months' and the substitution of '6 months' as the time for compliance. Subject to this correction and variation, the appeals are dismissed, and the enforcement notice is upheld.

Appeal A Ref: APP/X3540/C/20/3247258

59. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sarah Dyer

Inspector