



Appeal Decision

Site visit made on 16 June 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/D0840/C/20/3236889

Agricultural barn south of Welltown Farm, Callington, Cornwall PL17 8AE

- 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 Philip Fathers against an enforcement notice issued by Cornwall Council (the notice).
 - The enforcement notice, numbered EN17/01742, was issued on 4 June 2019.
 - The breach of planning control as alleged in the notice is the alleged unauthorised change of use of the land for the stationing of two caravans in the agricultural barn for residential use, the erection of a 1.8m high fence, car repairs/sale of car parts/vehicle storage taking place on the land and residential wooden structure within the barn.
 - The requirements of the notice are: (1) Cease all residential uses of the land and barn, including the caravans and wooden structure outlines in red on the attached plan; (2) Cease all vehicle repairs/sale of car parts and vehicle storage on site; and (3) Revert the land and barn back to its former condition to agricultural use, to include the removal of all cars and associated parts, remove the wooden fence erected adjacent to the road, and remove the caravans and wooden residential structure marked in the approximate locations on the attached plan.
 - The period for compliance with the requirements is for points 1, 2 and 3 above 9 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
-

Procedural Matters

1. The evidence shows that the land was in part being used for agricultural purposes at the time that the notice was served. Therefore, the alleged breach of planning control in section 3 of the notice should refer to a mixed use of the land. As the agricultural use of the land has been referred to by both parties in their submissions, correcting the notice to reflect this would not cause injustice to either.
2. The Council has misspelt the appellant's name in certain documents. However, given that he has been able to make his appeal in a timely manner, this has not caused him any injustice.

Ground (b)

3. This ground of appeal is that the matters alleged in the notice have not occurred. The burden of proof lies with the appellant to make his case.
4. The appeal site, which lies in the open countryside, comprises a large shed and associated land lying on the south side of a narrow, unclassified lane. The shed, which has an area of hardstanding in front of it, is located on relatively level land; on rising land beyond this, to its south, is a large field. On the north side

of the lane is Welltown Farm, where there are a range of agricultural buildings with dwellings.

5. With reference to the stationing of caravans for residential use in the barn, the appellant states that the allegation that there were two is incorrect. He states that at the time of the Council's last visit, there was only one on the site. In addition, the use of the wooden structure in the shed is for the keeping of animals. He does, however, acknowledge that people have stayed at the site for animal welfare purposes. These points have been reiterated by his agent, who acknowledges, however, that he had no knowledge of the site at the time the notice was served.
6. The Council served a Planning Contravention Notice on the appellant, which was dated 11 May 2018. In his responses, the appellant acknowledged the presence of two caravans in the shed. Furthermore, photographs appended to the Council's statement show two caravans in the shed. On the basis of this evidence, I am satisfied that this was the case at or before the time of the notice being served. Within the arguments put forward under ground (c) in the appellant's final comments¹, by which time it appears one caravan was removed, the use of a single caravan is put forward in the present tense. There it is stated that the caravan "is not in residential use...". However, the question is whether the two caravans were in residential use at the time that the notice was served. In this regard, there is a lack of evidence put forward by the appellant to show, on the balance of probability, that this was not the case.
7. The Council's evidence includes photographs that show what appears to be a fridge-freezer, microwave ovens, kettle, foodstuffs, bedding and washing hanging to dry in the wooden structure. The domestic paraphernalia in these photographs casts little doubt that the structure was, on the balance of probability, in residential use when or around the time that the notice was served. The evidence put forward by the appellant that that the wooden structure within the agricultural shed was used for agricultural purposes, including a single undated photograph of a goat in its doorway, does nothing to undermine that position.
8. Although the wooden structure has since been removed from the shed, it would not be appropriate to correct the notice, by omitting reference to it, as this would not preclude it from being brought back to the site for this use in future.
9. The appellant disputes the use of the land for the car-related activities alleged in the notice.
10. The submissions from both the Council and the occupants show a number of cars at the property. Although I appreciate that family members might visit the site to assist in agricultural activities, given the land's limited size, the photographs show more than might reasonably be expected in this regard.
11. At my site visit, I was able to see that the screen shots from online advertisements relating to vehicles for sale, put forward by the third party occupants of Welltown Farm, were taken at the site. However, not all of the third party submissions provide convincing evidence of car sales from the site. Notwithstanding this, the advertisement relating to a 2006 Ford Mondeo that would "need to be taken away on the back of a truck as is a non-runner"

¹ Peter Wonnacott Planning

indicates that not only was the photograph taken on the land but it was sold from there too. Although I understand why some people might photograph vehicles for sale away from their property, the evidence shows on the balance of probability that the land has been used for car sales.

12. Within the barn, photographs submitted by the Council show, amongst other things, parts of vehicles and numerous motor vehicles, some of which appear to be being worked on. Although I do not doubt that some have a connection to agriculture, many appear not to. Of particular interest in this regard, though not exclusively so, is what appears to be a stock car as well as various car wheels. In this respect, the appellant has, again, failed to provide a case to prove, on the balance of probability, that car repairs, the sale of spares and vehicle storage has not taken place on the land.
13. I do not concur with the Council's submission that because the appellant had not sought a certificate of lawfulness this counts against him. However, taken as a whole, the evidence put forward by the Council and third party presents a case that, on the balance of probability, the uses of the land as set out in the notice have occurred.
14. Given its height and position adjacent to a highway used by vehicular traffic, the fence referred to in the notice requires planning permission. This, and that no planning permission has been granted for it, is acknowledged by the appellant. The evidence shows that this was erected at the time that the notice was served.
15. On the basis of the evidence before me, I find that the development set out in section 3 of the notice has occurred. Therefore, the appeal on ground (b) fails.

Ground (c)

16. This ground of appeal is that those matters in the notice do not constitute a breach of planning control. Here, the appellant states that the wooden structure was in agricultural use and, thus, did not require planning permission; and the caravan on the land does not in part require planning permission. Again, the onus lies with the appellant to prove his case.
17. I have found that the wooden structure was in residential use, in ground (b), above. No evidence has been submitted to show that this did not require planning permission. As I have no evidence of its having permission, it is a breach of planning control.
18. Paragraph 7 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 states that a site licence shall not be required for the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation. Notwithstanding that he has an agricultural holdings number, the appellant has not provided evidence to show compliance with the terms of paragraph 7, above. Furthermore, the permitted development right for the use of land, set out in Class A of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, does not extend to the use of a building for this purpose. As both caravans were within the shed at the time of the notice being served, neither benefitted from this right.

19. I have been made aware of correspondence relating to the use of a caravan for welfare purposes. However, I am merely concerned with the lawful use of the site in the light of the breaches alleged in the notice.
20. The appellant has not put forward substantive evidence to demonstrate that the other matters referred to in section 3 of the notice do not represent a breach of planning control.
21. Therefore, in the light of the evidence before me, the appeal on ground (c) fails.

Ground (f)

22. This ground of appeal is that the steps required by the notice to be taken 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. Here, the purpose of the notice is to remedy the breach of planning control.
23. The appellant's case is that the requirements would: remove his rights to use a caravan for agricultural purposes; remove his rights to use the barn for work to agricultural vehicles; and making him remove the wooden structure goes too far as it is used for agriculture.
24. It is established case law² that a notice cannot remove the right to use land in its previous lawful manner. Therefore, a lawful use of the land for vehicles related to the agricultural use of the land would be unaffected by the notice. As the appellant has given little information as to what the "repair of his own vehicles" means, it is unclear whether this would be affected. Such uses in the future, as well as the use of the land for the siting of a caravan for purposes ancillary to the use of the land, are matters to be left to the Council, based on fact and degree.
25. I have found that the wooden structure was in residential use. I have not been provided with evidence to show why it should stay. Given its use, to require its removal is not excessive.
26. That the appellant lives permanently elsewhere is immaterial; where the notice is directed at the residential use of the land, this is not aimed at particular persons.
27. The arguments put forward by the appellant in his case under ground (f) would fail to achieve the purpose of the notice. Therefore, I find that the requirements in the notice to be clear; they are not excessive but are proportionate to remedy the breach alleged in the notice. For the above reasons, the ground (f) appeal is dismissed.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

² *Mansi v Elstree Rural District Council* [1964]

Formal Decision

29. It is directed that the enforcement notice is corrected by: the insertion of the words "to a mixed use of agriculture and" between "of the land" and "for the stationing..." in section 3 of the notice, 'The matters which appear to constitute the breach of planning control'. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Roy Curnow

INSPECTOR