



Appeal Decisions

Site visit made on 26 May 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal A Ref: APP/K1128/C/20/3248020

Appeal B Ref: APP/K1128/C/20/3248021

Land to the west of Moulton Hill Barn, Salcombe TQ8 8LF

- 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 N Murray against an enforcement notice issued by South Hams District Council (the notice).
- Appeal B is made by Mrs C Murray against an enforcement notice issued by South Hams District Council.
- The enforcement notice, numbered 012267, was issued on 7 February 2020.
- The breach of planning control as alleged in the notice are: (i) Without planning permission, operational development, namely: the erection of a shed, fuel storage unit, base and hardsurfacing; and (ii) without planning permission a material change of use of the land from agricultural use to vehicle parking and amenity land.
- The requirements of the notice are: a) Remove all gravel, hardsurfacing and membrane on which the gravel is situated from the land; b) Remove shed, fuel storage unit, and base on which the unit is placed from the Land; and c) Cease the use of the land for parking of vehicles and return the land to its agriculture use.
- The period for compliance with the requirements is three (3) months from the date this notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(b) and (f) of the Act. 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 have lapsed.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

Appeal C Ref: APP/K1128/C/20/3248023

Appeal D Ref: APP/K1128/C/20/3248024

Land south of Moulton Hill Barn, Salcombe TQ8 8LF

- 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 C is made by Mr N Murray against an enforcement notice issued by South Hams District Council (the notice).
- Appeal D is made by Mrs C Murray against an enforcement notice issued by South Hams District Council.
- The enforcement notice, numbered 012267, was issued on 7 February 2020.
- The breach of planning control as alleged in the notice are: (i) Without planning permission, operational development, namely: the construction of new banking, fencing, and paving slabs on the land; and (ii) Without planning permission a material change of use of the land from agriculture to amenity land .

- The requirements of the notice are: a) Remove new banks, fencing and paving slabs on the area of the land hatched red on the plan; and b) reinstate the hedge in accordance with the specification set out in the annex below, along the northern boundary of the land between points A and B so as to replace the hedge that has been removed.
- The period for compliance with the requirements is all works to be undertaken during the 2020/2021 planting season and completed by 20 March 2021.
- Both Appeal C and Appeal D are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Appeal E Ref: APP/K1128/C/20/3248025

Appeal F Ref: APP/K1128/C/20/3248026

Land to the east of Moul Hill Barn, Salcombe TQ8 8LF

- 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 E is made by Mr N Murray against an enforcement notice issued by South Hams District Council (the notice).
- Appeal F is made by Mrs C Murray against an enforcement notice issued by South Hams District Council.
- The enforcement notice, numbered 012267, was issued on 7 February 2020.
- The breach of planning control as alleged in the notice are: (i) Without planning permission, operational development, namely the construction of new banking as shown on the attached photograph; and (ii) Without planning permission a material change of use of the land from equestrian menage [sic] to amenity land .
- The requirements of the notice are: (1) Cease the use of the land for amenity purposes and return the land to its agriculture use; (2) Erect a new post and rail fence boundary along the western boundary of the Land to match the existing fence on the north and east boundaries of the Land, as shown in the attached photograph.
- The period for compliance with the requirements is two (2) months from the date this notice takes effect.
- Both Appeal E and Appeal F are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Procedural Matters

1. As set out above there are three different appeals. Although the alleged breaches are different in each case, the issues arising from these and the close proximity of the land that is the subject of the notices are such that I have considered each proposal on its individual merits but, to avoid duplication, I have dealt with the three appeals in a single decision letter.

Appeals A and B

Ground (b)

2. These appeals are made on the ground that that the matters alleged in the notice have not occurred. The burden of proof lies with the appellants to make their case.
3. The appellants do not challenge that the operational development referred to in section 3 (i) of the notice has occurred. Their case draws attention to a planning permission 41/0613/04/F, granted by the Council in 2004, (the 2004

permission). Amongst other things, this allowed for the change of use of the land, which is the subject of the notice, to a commercial livery. Thus, it is claimed that alleged breach (ii) in section 3 of the notice is incorrect and the breach has not actually occurred. The Council dispute this on the basis that the livery use ceased when permission was granted for the conversion of Moulton Hill Barn to a residential use.

4. Irrespective of the merits of these arguments, in which I have taken account of the requirement for the appellants to prove their case, the use of the land in both represents a change of use of the land that requires planning permission. Therefore, either way there has been a breach of planning control.
5. Established case law¹ states that where a notice alleges a material change of use it need not recite the previous use of the land. Therefore, reference to the previous use of the land can be deleted from the notice, through powers of correction², as long as no injustice were caused to either party. Here, having considered the submissions, I find that neither party would suffer injustice were the notice to be corrected by the deletion of reference to agriculture use.

Conclusion on ground (b)

6. For the reasons given above, I conclude that the matters referred to in the notice, as corrected, have occurred and that subject to this correction the ground (b) fails.

Ground (a)

7. The main issue in this appeal is the effect of the development on the character and appearance of the area. Moulton Hill Barn is a large building that has formerly been used for agriculture and equestrian purposes. It is associated with two fields, which were being used to graze cattle when I visited, and a grassed area that has been used as a manege. The land at Moulton Hill Barn is fairly flat, lying on a plateau-like ridge that separates two deep wooded valleys. The area is threaded by a network of narrow roads, set between high hedges, and public rights of way.
8. The land at Moulton Hill Barn lies within the South Devon Area of Outstanding Beauty (AONB). Paragraph 172 of the National Planning Policy Framework (the Framework) states that AONBs will be afforded the highest status of protection with regards to conserving and enhancing landscape and scenic beauty. Whilst a number of policies in the Plymouth and South West Devon Joint Local Plan 2014-2034, adopted March 2019, (JLP), refer to landscape protection, the aims of paragraph 172 are specifically reflected within JLP Policy DEV25.
9. The site is within an area of Heritage Coast (HC) and is locally designated as an area of undeveloped coast. The terms of JLP Policy DEV24 seeks to protect both from development that would result in harm to these areas.
10. I have not been provided with a copy of the Landscape Character Assessment prepared for South Hams and West Devon in 2018. However, I am told that the landscape lies within Landscape Character Area 2c 'River Valley Slopes and Combes' of the estuarine landscape of the Devon Character Area - Salcombe and Kingsbridge Estuary and adjacent to the Bolt Tail and Start Point Coastal

¹ For example, *Westminster CC v SSE & Aboro* [1983]

² Section 176 of the Town and Country Planning Act 1990, as amended

Plateau (LCA). From the submissions, it appears that the land is typical of the LCA.

11. The development that has been undertaken involved the breaching of a hedge, which forms part of the curtilage boundary to Moulton Hill Barn. This provides a link from the property's gravelled parking area to another gravelled hardstanding, which is surrounded by timber post and rail fencing. A domestic-style shed with a light-coloured cladding finish has been erected on the hardstanding, with a pair of oil tanks sited adjacent to it.
12. At the time of my site visit, as the hedges bounding the roads in the area were in full leaf, only glimpsed views of the development were gained from public vantage points in the vicinity. It would be likely, however, that the development would be more visible outside of the summer months when hedgerow vegetation would be less luxuriant. Furthermore, I could see that when vehicles use the gravelled hardstanding, they were not when I visited, they would draw attention to the development. Given the distance from the high ground to the south, the operational development that has been undertaken would be insignificant in the landscape. However, for the reasons set out above, vehicles using the gravelled hardstanding would be likely to have an effect over quite some distance, by reason of their colour and reflections from their windscreens which would draw attention to the development.
13. Although covering a relatively small area, and not open to views from the river valleys, the development has an adverse effect on the character and appearance of this part of the AONB. It has resulted in the incursion of an overtly domestic form into the open countryside which is incongruous and harmful. I do not find that this harm could be mitigated to an appropriate degree through the use of conditions, including those regarding the landscaping of the site.
14. For the reasons given above, the development causes harm to the character and appearance of the South Devon AONB. Thus, it is contrary to the terms of Policy DEV25 of the JLP and the terms of that document's Policies SPT12, TTV26, DEV23 that provide protection to the natural environment and countryside, and its Policy DEV24 that seeks to protect the undeveloped coast from harm. Given this environmental harm the works that have been undertaken do not represent sustainable development, contrary to the terms of JLP Policy SPT1.
15. Policy SALC Env1 of the Salcombe Neighbourhood Development Plan 2018-2034, adopted June 2019, (NP) seeks to protect the AONB and thus the development conflicts with its terms.
16. As JLP Policy DEV20 relates to the built environment, I do not find it relevant to the development that has been undertaken. I find similarly with regards to NP Policy SALC B1, which relates to design quality and safeguarding heritage assets.
17. Having regard to my conclusion on the main issue and all other matters raised, I am satisfied that ground (a) should fail and the deemed application for planning permission should be dismissed.

Ground (f)

18. This ground of appeal is 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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. The appellants challenge requirement c) in Section 5 of the notice in the appeals, which reads "cease the use of the land for parking of vehicles and return the land to its agriculture use". For the reasoning rehearsed in the ground (b) appeal, above, they state that commercial livery is the lawful use of the land. Therefore, based on this discrepancy, the terms of the notice is uncertain, and its requirements are imprecise. It should, therefore, be considered a nullity, and cite the case of *Miller-Mead v MHLG* [1963] in support of this.
20. Section 173(3) states that a notice shall set out its requirements to remedy the breach of planning control or any injury to amenity that has been caused by the breach. Section 173(4) defines the purposes of a notice and these include the discontinuance of the use of the land and the restoration of the land to its condition before the breach took place. A notice does not have to refer to the former use of the land. Furthermore, a notice cannot require the resumption of a former use.
21. Regardless of the lawful use of the land, requirement c) of the notice must be amended because a notice cannot require a specific use. Ceasing the unlawful use and restoring the land to the condition before the breach took place is sufficient to remedy the breach of planning control, and I shall amend the notice accordingly. This causes no injustice and the notice as corrected contains no ambiguity concerning the current lawful use of the land, which I do not have to resolve. However, the notice is not missing some vital element, as defined in s173 of the Act, so I do not find it to be a nullity. The powers conferred by s176(1) of the Act, allow for the correction of any defect, error or misdescription in a notice as long as this will not cause injustice to the appellant or local planning authority.
22. Here, I am satisfied that I can vary requirement c) in Section 5 of the notice by removing reference to agriculture use and replacing it with restoring the land to its condition before the breach took place. This chimes with my correction of the breach in section 3 ii referred to in the appeal under ground (b).

Conclusion on ground (f)

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

Formal Decision – Appeals A and B

24. It is directed that the enforcement notice is corrected and varied by: the deletion of the words "from agricultural use" in section 3 ii of the notice and the deletion of the words "return the land to agriculture use" and the substitution of the words "restore the land to its condition before the breach took place" in section 5 c) of the notice. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Appeals C and D

The Notice

25. The land to which the notice relates, referred to in section 2 of the notice, is described as being “edged in red on the attached plan”. Requirement a) of the notice, in its section 5, refers to the “land hatched in red on the plan”. The land is outlined in red on the plan, there is no red hatching.
26. However, using the powers in section 176, the requirements of a notice can be varied as long as no injustice befalls any party. This is a matter that has not been raised by the appellant and it is clear from their submissions that they clearly understand which area of land the notice refers to, as well as the area that its requirements relate to. Variation in this respect would not adversely affect the Council’s position. For these reasons, I find that varying the requirements of the notice to address this discrepancy would not cause injustice.

Ground (f)

27. In their cases here, the appellants state that the fence and bank are permitted development³. Therefore, it is argued, as these features in effect benefit from planning permission, the requirements of the notice exceed what is required to remedy the breach. Furthermore, to require the removal of these features, which could then be replaced without planning permission, is illogical. The above render the notice’s requirements uncertain, imprecise and it is, therefore a nullity.
28. The purpose of the notice is to remedy the breach of planning control; that is to say, cease the material change of use and return the land to its condition before the change of use occurred. In this circumstance, a notice may require the removal of works integral to facilitating the unauthorised use even if those works on their own might be permitted development that might otherwise be undertaken without planning permission.
29. Therefore, given its purpose, the requirements of the notice are not illogical, nor do they exceed what is required to remedy the breach of planning control. There is nothing imprecise or uncertain about them that would lead me to find that the notice is a nullity. The requirements are proportionate to remedy the breach alleged in the notice. The appeal is therefore dismissed.

Conclusion

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

Formal Decision on Appeals C and D

³ Under the terms of Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

31. It is directed that the enforcement notice is varied by: the deletion of the word "hatched" and the substitution of the word "edged " in requirement a) in section 5 of the notice. Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Appeals E and F

The Notice

32. Reference is made to a menage in the breach of planning control in section 3 of the notice. This is clearly a typographical error and should read manege. As using the powers in section 176 of the Act to correct this would not cause injustice to parties, I will substitute the manege for menage.

Ground (f)

33. Essentially the same arguments are put forward here, as in the Ground (f) cases in Appeals A and B. For the same reasoning that is set out there, I am satisfied that I can vary requirement a) in Section 5 of the notices without prejudice to any party. This can be done by removing reference to agriculture use and replacing it with the requirement to restore the land to its condition before the breach took place.

Conclusion

34. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with correction and variation.

Formal Decision on Appeals E and F

35. It is directed that the enforcement notice is corrected and varied by: the deletion of the word "menage" and the substitution of the word "manege" in section 3 of the notice and the deletion of the words "return the land to agriculture use" and the substitution of the words "restore the land to its condition before the breach took place" in section 5 a) of the notice. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Roy Curnow

INSPECTOR

