



Appeal Decisions

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2020

Appeal A: APP/Q9495/C/20/3249256

Appeal B: APP/Q9495/C/20/3249257

Land at Cross Dormont, Howtown Road, Pooley Bridge CA10 2NA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ken Bell (Appeal A) and Mrs Avril Bell (Appeal B) against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice was issued on 19 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, material change of use of land from agriculture to a mixed use for agriculture and siting of caravans and tents for residential holiday accommodation and storage purposes in excess of the use permitted by Class A of Part 4 of Schedule 2 and Class A of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The requirements of the notice are: Permanently cease to use the Land for the siting of caravans or tents other than in accordance with the use permitted by Class A of Part 4 of Schedule 2 and Class A of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The period for compliance with the requirements is two months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. It is directed that the enforcement notice be corrected by:
 - The deletion of the wording "Class A of Part 4" in paragraph 3 and substitution with "Class B of Part 4".
 - The deletion of the wording in paragraph 5 and its substitution with "Permanently cease to use the Land for the siting of caravans and tents for residential holiday accommodation and storage purposes other than in accordance with the level of use permitted by Class B of Part 4 of Schedule 2 and Class A of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015."
2. Subject to the corrections above, Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that these appeals can be determined without the need for a physical site visit. This is because I am satisfied that I am able to reach a decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the appeal process.
4. The appeal form indicates that an appeal is being brought on ground (e), that the notice was not properly served on everyone with an interest in the land. The National Park Authority (NPA) accept this to be the case as the notice was served on Mr Arthur James Bell and Mrs Annie Bell, who are sadly deceased. However, the appellants' Statement of Case confirms that this error has not prejudiced the appellants and therefore they do not wish to pursue this ground of appeal. I have determined the appeal on that basis.

Enforcement Notice

5. The alleged breach of planning control and the requirements set out in paragraphs 3 and 5 of the notice refer, amongst other matters, to uses permitted by Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council has confirmed that this was a typographical error and the reference should have been to Class B of Part 4 and not Class A. I shall therefore correct the notice to refer to Class B of Part 4. I am satisfied that this correction would not result in any injustice to the appellant or the Council as it does not alter the purpose of the notice which was clear from the description in the breach.
6. To ensure that the requirements of the notice are precise and consistent with the alleged breach, I shall correct the requirements of the notice in paragraph 5 to include use for residential holiday accommodation and storage.

Appeals A and B on ground (d)

7. The appeal concerns land to the north west of the farmstead of Cross Dormont, namely field no 0062, and its use as a caravan and camping site in breach of permitted development rights. Class B of Part 4, Schedule 2 of the GPDO would allow for the use of land for camping or storage for not more than 28 days in any calendar year, but not for use as a caravan site. Class A of Part 5 of the GPDO permits the use of land as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960. Paragraph 3 of Schedule 1 of the 1960 Act permits the use of land for a caravan site for not more than three caravans for a maximum of 28 days within a twelve month period.
8. The enforcement notice was issued on 19 February 2020. Therefore, the onus is on the appellants to show on the balance of probability that the change of use alleged in the notice took place on or before 19 February 2010 and continued for an uninterrupted period thereafter.
9. The NPA accept that the Land has been in some use as a camping and caravan site for over 10 years, however they do not accept that there is sufficient evidence to demonstrate that the level of use alleged in the notice has been continuing for a 10 year uninterrupted period.

10. The appellants have provided a couple of photographs which are said to have been taken in 2006 and 1996. In addition, they have supplied an aerial image dated 30 May 2009. These photographs show the appeal site being used as a caravan and camping site on the dates stated. However, they do not provide evidence that the Land has been in continual use for this purpose, only that the use was taking place on the dates the images were taken. Similarly, the photograph showing the presence of an advertisement board at the site entrance does not prove that the appeal site has been in continual use for that purpose. Indeed, there is no dispute that there is permission for a small static caravan site at Cross Dormont, nor that the field to the south of the access track and west of the historic farmhouse can be lawfully used as a campsite. Therefore, it would be expected that that the caravan and camping site would be advertised.
11. As set out in paragraph 7 above, a certain level of use as a camping and caravan site is permitted under the terms of the GPDO. Therefore, the evidence of actual use of the appeal site over and above that permitted by the GPDO is critical to my decision in this appeal. Each of the appellants has provided a statutory declaration which claim that they have operated the appeal site as a camping and caravan site since 1988, with no breakage in use throughout that time, and that the appeal site is occupied for substantially more than 28 days in any calendar year. However, there is no hard evidence of actual usage. There are no accounts, receipts or evidence of bookings that would demonstrate the actual level of use of the appeal site. Nor has a copy of a site licence been provided, which would be required for the claimed level of use. The appellant states that the operation of the use at the appeal site generates an average annual income of £5000 to £6000, which supplements the farming activity at the site. However, taking into account the tariffs shown on the site's website, this amount is significantly below the sums that would be generated from the level of usage identified in Mr Bell's statutory declaration.
12. Furthermore, the authors of the other statutory declarations submitted in support of the appeal do not reside in the vicinity of the appeal site but have been predominantly visitors to it. It is difficult to see how visitors taking a holiday at the site would have knowledge of its actual level of use over the whole calendar year.
13. On the other hand, it is clear from the representations from third parties who live close to the appeal site, and from the NPA Statement of Case, that the level of usage has increased over the last three years. This increase in activity would seem to coincide with the introduction of the siting of seasonal touring caravans, improved camping facilities within the appeal site and a new website.
14. The absence of any mention of the appeal site being used as a campsite when in 2004 a planning application for the use of a field to the south of the access track was considered, also casts doubt on the accuracy of the statutory declarations claims with regard to the level of usage of the appeal site since 1988.
15. Consequently, the circumstances of this case are such that I am not satisfied that the appellants' evidence is sufficiently precise or unambiguous to conclude on the balance of probability that the use in question is immune from enforcement action.

16. I conclude that the use of land as a mixed use for agriculture and siting of caravans and tents for residential holiday accommodation and storage purposes in excess of the use permitted by Class B of Part 4 of Schedule 2 and Class A of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 has not become lawful due to the passage of time. The appeals on ground (d) do not succeed.

Appeals A and B on ground (f)

17. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
18. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control and to remedy injury to amenity.
19. The appellants consider that the harm to amenity is solely caused by the siting of the touring caravans in a specific location within the field. Therefore, it is excessive to require all the activities to cease. However, the notice does not require all activity to cease, only where that activity is in breach of the level of use permitted by the GPDO. Furthermore, in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f), and the notice cannot therefore be varied to attack its substance. It is not therefore open to me to substitute lesser steps that would allow any element of the unauthorised use to continue. Those lesser steps put forward by the appellant would not remedy the breach of planning control and there are no lesser steps available which would achieve the statutory purpose behind the notice.
20. The appeals on ground (f) therefore fail.

Conclusion

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

Elizabeth Pleasant

INSPECTOR