



Appeal Decision

Site visit made on 2 June 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2020

Appeal Ref: APP/B2355/C/19/3243293

Land at Clough Bottom Farm, Cob Castle Road, Haslingden, Rossendale BB4 5TX

- 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 Mr Peter Greenhalgh against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 14 November 2019.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the material change of use of the Land from agriculture to a mixed use comprising agriculture, residential (facilitated by the siting and residential occupation of a mobile home) and the storage of vehicles, horse boxes and van backs (facilitated by the deposition of hardstanding).
 - The requirements of the notice are:
 - a. Cease the residential use of the Land.
 - b. Remove the mobile home, the timber skirt and all residential paraphernalia associated with it from the Land.
 - c. Cease the use of the Land for the storage of motor vehicles, horse boxes and van backs.
 - d. Remove all hardstanding from the Land.
 - e. Topsoil and seed the land to grass to match the adjacent field.
 - The period for compliance with the requirements is within 12 months from the date this Notice takes effect, i.e. on or before the 17 December 2020.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended. 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 as amended has lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by:

- Deleting "BB4 5TS" in paragraph 2 and substituting with "BB4 5TX".
- Deleting the words "from agriculture" in paragraph 3 and inserting the words "and parking" after the word "storage".
- Deleting the seventh paragraph found within Paragraph 4, Reasons for Issuing This Notice and replacing it with "In planning practice guidance a statutory definition of a caravan is to be found in the Caravan Sites and Control of Development Act 1960, as supplemented by sec.13 of the Caravan Sites Act 1968. The 1960 Act at sec.29 states that a "caravan" means any structure designed or adapted for human habitation which is

capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any other motor vehicle so designed or adapted. The siting of the mobile home coupled with its unappealing appearance is considered to be highly inappropriate development which is having a detrimental impact on this countryside location."

- Insert the wording "and parking" after the word "storage" in paragraph 5c.
 - Deleting the wording ", i.e. on or before the 17 December 2020" in paragraph 6.
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

3. The appellant has confirmed that the grounds of appeal should be (c) and (d) and that ground (b) had been ticked in error on the appeal form. I have determined the appeal on that basis.

Enforcement Notice

4. The postcode of the Land in paragraph 2 of the notice is incorrect. Both the Council and the appellant agree that it should be BB4 5TX and not BB4 5TS. I shall therefore correct the notice to that effect.
5. The previous use of the appeal site is unclear. Therefore, as it is not necessary for that use to be recited in the description of the alleged breach of planning control, I shall correct the notice by deleting the words "from agriculture" from paragraph 3.
6. From the evidence before me, including the Council's reasons for issuing the notice, some of the vehicles on the Land are being parked rather than stored. In the interests of precision, I shall therefore correct the notice to include parking of vehicles as well as storage. I am satisfied that this correction and those in the paragraphs above, would not cause any injustice to either the Council or the appellant as they do not alter the purpose or meaning of the notice.
7. The Council's reasons for issuing the enforcement notice suggest an element of ambiguity in the nature of the residential use alleged as a breach of planning control. The Council has subsequently confirmed that they consider the mobile home in the allegation to be a caravan and not a building. To remove any inconsistency, I shall correct the notice by deleting some of the text in Paragraph 4 which suggests the mobile home is not "readily moveable". The deletion of this text does not alter the reasons for issuing the notice and there would be no injustice to either party.
8. The time for compliance in paragraph 6 of the Notice states that this should be on or before the 17 December 2020. However, this date would only have been correct had an appeal not been made. I shall therefore delete the reference to the date when the 12 months would have lapsed had the appeal not been made.

Background and Planning History

9. Clough Bottom Farm (CBF) extends to approximately 12.14 hectares of agricultural and equestrian land and buildings. The Land identified by the enforcement notice lies to the west of the farmyard. It is a hard surfaced area, which at the time of my site visit and as seen from photographs provided by the Council in their Statement of Case, has the appearance of a vehicle parking/storage area with a mobile home sited within it. At the time of my site visit, the vehicles included a small number of cars, horse boxes and a highway maintenance vehicle.
10. The appellant purchased CBF in 2005, and since then has erected new agricultural and equestrian buildings and converted a stone barn into a dwelling. There has been a mobile home on land at CBF throughout the appellant's ownership.
11. Planning permission was granted retrospectively in May 2018 for the change of use of agricultural buildings, construction of a building, horse walker, exercise pen, use of an existing manege, installation of floodlighting on the perimeter of the existing manege and customer parking, and to form a mixed-use site comprising agriculture and commercial livery. I have been provided with a copy of the site plan and the site/block plan to which that planning permission relates¹, which includes part but not all of the Land identified in the enforcement notice.

Appeal on grounds (c) and (d)

Summary of cases

12. The appellant's case on ground (c) is that the vehicles and cars parked are solely those used in connection with the residential use of the mobile home and the agricultural and livery use at CBF. They are therefore incidental to the approved mixed agricultural and commercial livery use and are a legitimate use of the Land under the provisions of the 2018 planning permission. Furthermore, it is claimed that there has always been a hard surface area around the mobile home which just been renewed, and there has been a mobile home on the site for over 10 years thereby making it immune from enforcement action (ground (d)).
13. On the other hand, the Council advise that the mobile home has not been in exactly the same position on the Land for the last 10 years and cannot therefore be lawful. Furthermore, the Land around the mobile home and included in the notice has only recently been hard surfaced to facilitate the parking and storage of vehicles. The 2018 planning permission does not include all of the Land which is specified in the notice and a material change of use of the Land has taken place.

Main issues

14. Grounds (c) and (d) are closely linked in the respective cases and so I will deal with them together.
15. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The main issue is whether as a matter of fact and degree

¹ Local Planning Authority Ref: 2017/0625

there was a material change in the use of the Land to a mixed use, comprising agriculture, residential and parking/storage of vehicles, horse boxes and van backs. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to what has gone on previously.

16. In order for the appeal to succeed on ground (d) it has to be demonstrated that at the time the enforcement notice was issued it was too late to take enforcement action. In this case it has to be shown that the mixed use in question commenced more than 10 years before the notice was issued and has continued actively through the subsequent 10 year period. The relevant date is 14 November 2009 and the test for the evidence is the balance of probability.

Reasons

17. A starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of change. Referring to the leading case of *Burdle*², a useful working rule is to assume that the unit of occupation is the appropriate planning unit unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes.
18. In 2005 the sales particulars described CBF as a small farm with an existing self-contained flat, a good range of outbuildings and approximately 30 acres of grassland³. Reference is also made to planning permission for a 5 bedroom barn conversion. The particulars indicate the land functioned as a single planning unit and there is no evidence to suggest otherwise.
19. Whilst not necessarily determinative, a factor to take into account is the 2018 planning permission for a mixed agricultural and commercial livery use. The description of the mixed use did not include a primary residential use. The approved site/block plans focused on the land and buildings and customer parking areas centrally located within the wider land ownership. Therefore, the application site did not extend to the whole 12.14 ha of land at CBF and did not include all of the Land which is identified in the enforcement notice. In particular, the site of the residential mobile home and the hard surface parking area which now surrounds it and extends to the west were excluded from the planning permission. The Design and Access Statement described how the appellant had developed the livery use since acquiring the farm in 2005 and that the business was essential diversification of the farming activities. The livery business appeared to be functionally distinct from the wider holding. This evidence indicates as a matter of fact and degree a separate planning unit, focussed on the commercial livery business, was formed by 2018.
20. Turning specifically to the Land, a mobile home was sited on the Land when the appellant purchased CBF in 2005. However, the sale details for CBF at that time did not identify the mobile home as a separate unit of residential accommodation. Statutory declarations provided to support the appellant's case indicate that the appellant occupied the mobile home between 2005 and 2007, which would appear to coincide with when the barn conversion took place. The appellant's brother, who was also involved in operations at CBF, occupied the mobile home between 2007 and 2016. During that time I

² *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240

³ Equivalent to 12.14 ha

understand the original mobile home was replaced and slightly repositioned on the Land.

21. The aerial images submitted as appendices to the appellant's statement of case indicate that prior to June 2013 the mobile home was stationed in a field. There is no evidence that the mobile home had a residential curtilage at that time nor that there was a hard surfaced parking area around it. This position coincided with the period of time the mobile home was occupied firstly by the appellant and then by another member of his family. I have not been provided with any substantive evidence that would lead me to conclude that the mobile was stationed on the Land at that time other than for the purpose of providing accommodation incidental to the primary residential use at CBF.
22. The aerial images indicate that since 2013 the character of the appeal site has changed. Up until that time the mobile home appeared to be stationed in a field with only grass or dirt around it. Considering the later aerial images and my own observations on site, the Land now has a more formal layout with the mobile home repositioned and sited within a hard surfaced vehicle storage and parking area, which is partially enclosed by fencing and rising land. Moreover, since 2016 the mobile home has been occupied by a riding instructor as a separate family unit. The evidence therefore indicates that its use is no longer related to the lawful primary residential use at CBF. The details of Council Tax searches relating to a caravan adjacent to CBF do not add to the evidence on the presence and occupation of the mobile home on the land since 2005.
23. In terms of the alleged primary use for vehicle storage/parking, the probability is that the horse boxes and vehicles belong to the appellant, the occupier of the mobile home and users of the livery, which is supported by the evidence from the appellant. However, it is very relevant that except for the part of the appeal site which lies immediately to the north west of the horse walker, the Land does not benefit from permission for a mixed agricultural and commercial livery use. Furthermore, the land immediately to the north west of the horse walker was not identified as a customer parking area in the 2018 permission. Indeed, the appellant acknowledges that this area was hard surfaced as an alternative to the proposed parking area identified in the 2018 permission, as that area would have required substantial levelling works.
24. All these factors indicate that a new planning unit as a residential caravan site and vehicle parking/storage area, facilitated by the laying of a hard surface has been formed.

Conclusions

25. The uses taking place at CBF have clearly evolved over time. Taking account of the evidence on physical and functional considerations, the Land as a matter of fact and degree became a separate planning unit in a mixed use comprising agriculture, residential (facilitated by the siting and residential occupation of a mobile home) and the parking and storage of vehicles, horse boxes and van backs. The character of the activities and use is significantly different from its previous use and a material change of use has therefore occurred.
26. In the absence of any planning permission for the material change of use of the Land I find that it constitutes a breach of planning control.

27. Furthermore, I conclude that the breach of planning control is not immune from enforcement action by the passage of time. The fact that the siting of the mobile home has changed slightly over time is not a determining factor, rather it is the creation of a new residential unit as part of the mixed use within the relevant ten year period.

28. The appeal on grounds (c) and (d) therefore fails.

Overall Conclusion

29. The appeal is dismissed and the enforcement notice is upheld with corrections.

Elizabeth Pleasant

INSPECTOR