



Appeal Decisions

Site visit made on 27 July 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Land adjoining Oak Spring (also known as Hodmadod Farm), off The Street, Darsham, Suffolk

Appeal A: APP/X3540/C/19/3243064

Appeal B: APP/X3540/C/19/3243059

- 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 Colin Thackeray (Appeal A) and Mrs L Thackeray (Appeal B) against an enforcement notice issued by East Suffolk Council.
 - The enforcement notice was issued on 13 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of land from agriculture to a residential use, the stationing of a mobile home for residential use, with attached wooden cladding and roof, the stationing of a metal container, a modular building, formation of a pond and the storage of non-agricultural items.
 - The requirements of the notice are:
 1. Permanently cease using the Land for the stationing of a mobile home for residential use, the siting of metal containers and the siting of a modular building.
 2. Permanently remove from the Land the mobile home, wooden cladding and roof, the metal container and modular building and any other fixtures or fittings used to attach them to the ground.
 3. Permanently fill-in the pond on the Land using uncontaminated soil until completely filled and replant the area with grass seed.
 4. Permanently cease using the Land for residential purposes and revert the Land back to its original agricultural use as agricultural land.
 5. Permanently remove from the Land all non-agricultural items or equipment.
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice be corrected by:
 - inserting the word "material" before "change of use" in paragraph 3.
 - inserting the words "mixed use of agriculture and" before "residential use..." in paragraph 3.
 - deleting the words "formation of a pond" from paragraph 3. and deleting paragraph 5.3.
 - deleting the text in paragraph 5.1. and substituting "Permanently cease the residential use of the Land".

- deleting the text in paragraph 5.4. and substituting “Restore the land to its previous condition as agricultural land.”
2. Subject to those corrections, the appeal is allowed on ground (c) in respect of the ‘stationing of a metal container’ and the enforcement notice is quashed in that regard. Otherwise, the appeal is dismissed and the enforcement notice is upheld as corrected.

Procedural Matters

3. The enforcement notice follows the quashing of an earlier notice in an Appeal Decision¹ dated 17 October 2019 intended to attack much of the same development. In such circumstances s171B(4)(b) of the 1990 Act allows a further period of 4 years for the local planning authority to issue a subsequent notice for any breach of planning control, provided the first notice was not already out of time. There is no suggestion the previous notice was issued outside the 10 year time limit applicable for allegations of a material change of use under s171B(3).
4. At the same time that the earlier notice was quashed, another enforcement notice was upheld on appeal² in respect of certain specified structures at the appeal site. Unless it is already subject to legal challenge, that enforcement notice will now have come into effect. Whilst I understand the appellants feel aggrieved by that decision, it is not a matter within my remit. I must focus solely on these appeals and the development alleged within the latest notice.
5. In doing so, it is appropriate that I emphasise that there is no ground (a) appeal before me with deemed planning application. Therefore, I cannot consider the planning merits and whether or not harm arises to the surrounding landscape character. The effect on character is only relevant to the extent that it may, or may not, indicate if there is a material change of use of the relevant planning unit.
6. The appellants have made submissions regarding an electric box located inside the site entrance. This does not form part of the notice before me.

Matters Relating to the Notice

7. The heading on the enforcement notice refers to a ‘material change of use’ but the word ‘material’ is missing from the allegation. Only a ‘material’ change of use is an act of development. As a simple amendment the word ‘material’ should be inserted instead of the word ‘unauthorised’.
8. The latest notice includes the formation of a pond which was not within the previous notice. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development. Whilst no appeal has been brought on ground (b) to argue that a breach has not occurred (in whole or part), the appellants queried what pond the Council meant. The Council responded with a photograph taken in October 2019 showing what appears to be a sunken area with mud and possibly some shallow water. During my site visit I saw this same area with fencing enclosing a few ducks and chickens. The ground was a mix of

¹ Appeal ref: APP/J3530/C/18/3198904

² Appeal ref: APP/J3530/C/18/3199208

grass, weed and clumps of hardened earth. What I saw corresponds with the previous Inspector's description from his visit in July 2019 of a compound for chickens and ducks without mention of a pond. There was no sign of soil excavation to suggest a pond had been dug although the ground level was uneven and dipped indicating it could be prone to water logging. From what I saw, a pond has not been formed as a matter of fact and I shall delete references to it from the notice accordingly.

9. At my site visit the Council pointed out a rotary washing line, tables and chairs, statues and various other domestic items as examples of the 'non-agricultural storage' attacked by the notice. It seems to me that these items were not being stored but formed part of the residential use to which the notice is directed. Apart from the modular building, which I shall come on to, no other non-agricultural items being stored were drawn to my attention. In such cases the requirements simply need to specify the removal of those items which is already encompassed in the final requirement.
10. Not all of the land can be said to be in residential use. A large part of the unit of occupation is pasture through which a public footpath crosses. Crops may have been grown in the field in the past and it may not now be actively farmed but (setting aside the donkey enclosure) it remains pasture with no sign of residential use on this particular area. From what I saw the land appears to be in a mixed use of residential and agriculture and this should be reflected in the allegation.
11. There is duplication in the requirements of the notice. Both requirements 1 and 4 in paragraph 5 require cessation of the residential use. The first part of requirement 4 can be deleted. A notice cannot require that the land revert to agricultural use. What it should say, is to *restore* the land to its previous condition as agricultural land. The second part of requirement 4 should be corrected accordingly. It is incorrect for requirement 1. to include reference to the stationing of a mobile home as it is the residential use to which the mobile home is put which amounts to the use of land. It is enough for requirement 1 to say: 'Permanently cease the residential use of the Land'. Removal of the mobile home is already addressed in requirement 2.
12. I have a duty to put the notice in Order and wide powers of correction under section 176(1) of the 1990 Act. Although quite a lot of changes are needed to the enforcement notice, they do not alter the substance of the notice and I am satisfied that they can be made without injustice to either party.

Reasons

13. An appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.
14. The onus is on the appellants to make out the case that there has not been a breach of planning control. All arguments that there has been no development, or that planning permission is not required for whatever reason, or that permission is granted come under this ground.
15. Section 55(1) of the 1990 Act defines the two limbs of development. Firstly, operational development which means the carrying out of building, engineering, mining or other operations in, on, over or under land. Secondly,

the making of a material change of use of land. The first comprises activities which result in some physical alteration to the land with some degree of permanence, whilst the second comprises activities which are carried out in, alongside or on the land, but do not interfere with the actual physical characteristics of it.

16. The appeal site occupies a corner plot parallel with the A12 road and The Street from which it is accessed. It is a sizeable area bounded by trees and hedgerow. The authorised use of the land is for agriculture. Most of the western part of the site is pasture. An area is enclosed for donkeys. This adjoins the fenced off eastern part of the site. Gates allow access between the two areas which lie within single ownership. Having regard to the layout and use I consider the planning unit to be the site as a whole as reflected in the enforcement notice plan.
17. The appellant argues that there has been no breach of planning control because the mobile home is a temporary structure capable of being moved by one of the farm tractors. The enforcement notice does not suggest it is anything other than a temporary structure. It has been timber clad, a pitched corrugated roof and flue added, but the mobile home is not affixed to the ground and appears capable of being moved by heavy machinery. I concur that it does not have the features of a permanent building. The mobile home contains a bedroom containing a double bed and bath, separate toilet, seating area with sofas and television, a kitchen area fitted with electrical appliances such a cooker, fridge/freezer, sink and worktop space. It is clearly in residential occupation given the personal possessions on display throughout.
18. Indeed, the appellants describe the land as their home for which they have been paying Council Tax since January 2019. The stationing of a caravan for residential use amounts to a use of land and the enforcement notice is correct to identify it as such.
19. There is a wooded area with Christmas trees and many newly planted trees including small enclosed orchards. The site boundaries have also been boosted with additional planting which screen activities deeper within the site. Most of the pasture appears well mown but unused and there is some agricultural equipment and machinery around the site. However, none of this alters the fact that there is plainly a residential use taking place which is more than *de minimis*³. Such use includes the mobile home and spills into other adjoining areas where grassed areas have been enclosed. There is more than one seating area laid out among the trees with table, chairs, canopied seat, a rotary washing line, bird table, decorative archway, a see-saw and garden ornaments. They all contribute to the domestication of the site giving the appearance of a residential garden even though elsewhere there is a couple of enclosures for poultry and some agricultural machinery/equipment.
20. Thus, there has been a material change of use to include a residential use which amounts to development for the purposes of s55(1) of the Act for which planning permission is required under s7 but has not been obtained.

³ Meaning too small to be taken into consideration

21. The appellants also refer to the land being the home for a number of rescue animals including donkeys kept in a field. A wooden field shelter used for donkeys was comprised in the previous notice which was upheld. It is not part of this notice. As noted by the previous Inspector the use of agricultural land for the grazing of donkeys would not involve a material change of use of land requiring planning permission. In this case a section of pasture has been cordoned off to accommodate the donkeys. I agree with the previous Inspector that the two donkeys which I saw appeared to be more akin to pets being kept on the land rather than an agricultural use for the purposes of the production of food, wool, skins or fur, or for use in the farming of land as described within s336 of the Act.
22. When taking enforcement action previously the Council separated out the changes of use from operations in different notices. This notice is expressed to be taken against a material change of use and refers to the 'stationing of a metal container' and 'a modular building'. It does not specify their use or alternatively say they are being stored. Shipping style containers are often regarded as buildings, but in this instance, there is no indication the structures were intended to be included as either building operations or operations facilitating an unauthorised use. I shall therefore deal with them on the basis of an alleged change of use.
23. The 'modular building' is a small grey metal structure positioned beside the field shelter and next to the donkey enclosure. It is placed on concrete slabs and is of a size that could be moved easily with the aid of a lifting device. Its use for storage constitutes a use of land. Straw bales were stored inside along with other items, such as grooming brushes, which appeared to be associated with the upkeep of the donkeys. The structure is not in use for agricultural storage because the keeping of donkeys is not an agricultural use. It falls within the category of 'the storage of non-agricultural items' attacked in the allegation.
24. The large blue shipping container is positioned close to the south-eastern boundary of the site. At the time of my visit there was only a tractor inside. Another tractor, a trailer and some agricultural equipment were nearby. Although there was no sign of active farming taking place, the appeal site includes a large area of pasture the maintenance of which will, in all probability, involve the use of a tractor and other equipment. There is no information before me to indicate that the container was used for non-agricultural purposes at the time the notice was issued. In the absence of evidence to the contrary I can only conclude that on the balance of probabilities the container is in use for agricultural purposes. That being so, I find as a matter of fact and degree that there is not a material change of use of the land arising from the stationing/use of the metal container to give rise to a breach of planning control in this regard. I shall quash the notice insofar as it relates to the metal container.
25. To this limited extent the appeal on ground (c) succeeds.

KR Seward

INSPECTOR