



Appeal Decisions

Site visit made on 16 November 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 November 2020

Appeal Refs: APP/J9497/C/20/3256024 & 3256025

Land at Bowden Place (formerly Cleave House), Sticklepath, Okehampton, Devon EX20 2NL

- 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 appeal is made by Mr Timothy Penrose and Mrs Ruth Penrose against an enforcement notice issued by Dartmoor National Park Authority (DNPA).
 - The enforcement notice was issued on 4 June 2020.
 - The breach of planning control as alleged in the notice is: 1. The material change of use of the land from an agricultural/horticultural plant nursery to a mixed agricultural/horticultural plant nursery and B8 storage/distribution use. 2. Operational development consisting of the siting of a metal shipping container on the land in the approximate position shown marked "A" on the plan.
 - The requirements of the notice are: 5.1 Permanently cease using the land for any use other than the established use as an agricultural/horticultural plant business; 5.2 Permanently remove the shipping container from the land.
 - The period for compliance with the requirements is: 5.1 is within 180 days of the notice taking effect; 5.2 is within 60 days of the notice taking effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the Enforcement Notice (EN) is upheld.

Preliminary Matters

2. The metal shipping container referred to is no longer on the appeal site. Nevertheless, the container has been attacked as part of the alleged breaches of planning control and so I shall consider the appeal evidence accordingly.
3. In legal grounds of appeal, such as under S174(2)(c) and (d) of the 1990 Act, the burden of proof to make out the case successfully rests with the appellants.

Ground (c)

4. Under s55 of the 1990 Act development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. S57 of the Act defines that planning permission is required for development. A ground (c) appeal is based on the claim that the matters stated in the EN do not constitute a breach of planning control. In other words, has development occurred without the necessary planning permission? Therefore, the main

issue is whether, on the balance of probability, there has been a breach of planning control.

Material Change of Use

5. The building and the yard were previously used as a depot for a transport and storage business alongside which, during the 1980s and 1990s, a hobby plant nursey business specialising in hostas was established which has expanded over the past 30 years. In 2004 the site was acquired by Mrs Penrose from her parents and since then it has continued as a specialist plant nursery.
6. The appearance of the site is typical of a plant nursery with a range of polytunnels that cover a significant proportion of the land. Although these are in varying states of repair, at my site visit I observed that there were numerous pots planted up and there was a customer parking area. DNPA advise that the Bowdens Hostas web-site states "Our nursery is open for the sale of agapanthus, hostas, ferns, bamboos and herbs, Monday to Saturday 10am to 4pm, February through to September". As well as retail sales of plants grown on site, sales also occur of other plants and other related items bought in from elsewhere.
7. It does not seem unusual to me for any plant nursery business that sales will take place of other items not produced or grown at the site. It would be a sensible part of running any diverse business. In this case the appellants state that these retails sales and distribution accounts for 60-65% of business turnover. However, there is no hard factual evidence of this. Moreover, some of the distribution and sales includes other businesses that sell products for Bowdens such as Amazon. This points to a business that may operate very well by mail order over the internet which may account for a significant proportion of sales. However, this does not mean that the dominant or primary use of the land as I saw it is not for the propagation of plants.
8. There is also no significant evidence to substantiate the claim made that the land is still used in part, as originally, for B8 transport/distribution depot purposes. Being liable for business rates as opposed to agriculture, which is not rated as such, also does not show in planning terms that there is a lawful mixed use that includes storage and distribution. The appellants evidence does not, as a matter of fact and degree, show there is a lawful mixed use. To my mind the trade of plant sales and related products from those grown and bought and redistributed is one overall horticultural use. The primary lawful use is as a plant nursery, which has probably been the case since 2004.
9. The appellants do not dispute that in 2016 they acquired a business known as 'Dartmoor Auctions' and the nursery premises were used to operate the business, albeit I note that no auctions occur at the site. More recently, in 2018/2019, 'Move Me' was set up as an extension of the auction business. Together the businesses undertake house clearances, house removals, storage of household items while people are moving, disposal and storage of waste from the house clearances and sales of some items as well as other online sales of furniture.
10. It seems to me that these businesses are fundamentally distinct and materially different from a plant nursery. DNPA has referred to neighbour complaints relating to the increase in traffic movements to and from the site with a significant increase in the numbers of cars and lorries entering the site, noise

from the loading and unloading of vehicles and the subsequent storage of items in the former potting shed building and the container. Reference is also made to the disposal of other items in a skip and the regular emptying of the skip.

11. I acknowledge that the complaints may have arisen from someone who has recently moved into the area, but there is no evidence from the appellants, such as vehicle numbers and types of deliveries, to counter the claims made or DNPA's view that the character of the way the site has operated since around 2016 has materially changed from before that time. Moreover, these businesses are operating over different and longer hours than those associated with the former seasonal operation of the nursery.
12. Taking all the above in the round, I find that a material change of use has occurred to a mixed use as set out in the EN for which planning permission has not been granted. Consequently, for this part of the matters stated in the EN, there has been a breach of planning control.

Operational Development – the container

13. Although the container has been removed, I have dimensions of it and some photographs. Whilst I note the appellants' arguments that the container is like a chattel on the land, there is nothing to substantially dispute the case made by DNPA that applying the well-established tests of size, attachment and degree of permanence that it was a building. The analogy made with a trailer is not good because, subject to the circumstances of any such case, if it had wheels it would probably be classed as moveable. Any possible permitted development fallback for the erection of a building the size of the container is irrelevant to deciding whether there has been a breach of planning control.
14. The appellants have not discharged the burden on them to show that on the balance of probability the shipping container was not a building. It did not have planning permission and so this was also a breach of planning control.

Ground (c) conclusion

15. For the reasons given, the ground (c) appeals fail.

Ground (d)

16. For the reasons set out above, in my view the mixed use of the land attacked in the EN only started around 2016 which is several years short of the time limit set out in s171B(3) of the 1990 Act. Although the container has now gone, it has not been disputed that it was on the site for about 21 months. That is short of the time limit under s171B(1) of the Act. Therefore, for both parts of the development attacked in the EN, enforcement action could still be taken against them. Consequently, the ground (d) appeals also fail.

Ground (f)

17. Given my findings under ground (c), the requirement to cease any use other than the established use as an agricultural/horticultural plant business does no more and no less than seek to end the unauthorised mixed use. That requirement is clearly not excessive, and it would not interfere with the way that the site was used up to 2016. Thus, the appellants would be able to operate their business as they did before. As I have found that the container was a building, and not a change of use of the land, the step requiring its

permanent removal is not excessive. The steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control. Accordingly, I do not agree that it is necessary to change the requirements as suggested by the appellants. The ground (f) appeals fail.

Conclusion

18. Concerns raised in response to comments made by the Parish Council and matters of planning merits made by both sides are not issues that I can consider under the grounds of appeal that have been pleaded. I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR