



Appeal Decisions

Site visit made on 24 November 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal A: APP/H1033/C/20/3254280

Appeal B: APP/H1033/C/20/3254281

Four Acres, off Buxton Road, Whaley Bridge, High Peak SK23 7JY

- 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 Mrs Christine Kay Horner and Mr Philip Horner against an enforcement notice issued by High Peak Borough Council.
- The enforcement notice was issued on 19 May 2020.
- The breach of planning control as alleged in the notice is the material change of use of the Red Land from use for agriculture to a mixed use as agricultural land and land used for the stationing of a static caravan for the purposes of human habitation, and the storage of a water container, trailer, wooden shed and attached raised deck and the use of the Land for ancillary purposes including but not limited to the storage of picnic tables and benches.
- The requirements of the notice are to restore the Red Land to its former condition before the Change of Use took place by:
 - 5.1 Cease using the Red Land for the occupation of the static caravan for residential purposes.
 - 5.2 Remove the static caravan (shown in photographs marked EN02 and EN03) together with any hardstanding/means of stationing the static caravan and any other domestic paraphernalia from the Red Land including but not limited to boat and canoe.
 - 5.3 Remove from the Red Land the black water container (shown in photograph EN04) from the Land.
 - 5.4 Remove from the Red Land the wooden shed and raised decking, trailer, picnic tables and benches in connection with the Change of Use (shown in photographs EN02 and EN03).
 - 5.5 Remove from the Red Land all of the leylandii/conifers that have been planted along the side elevation of the static caravan (shown in photographs EN02 and EN03).
 - 5.6 Reseed the Red Land with grass below the static caravan and other structures/items that have been removed.
- The period for compliance with the requirements in respect of paragraphs 5.1, 5.2, 5.3, 5.4 and 5.5 within 4 months. In respect of paragraph 5.6, within one month of compliance with paragraph 6.1.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

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

The appeals on ground (c)

1. The ground of appeal is that the matters alleged do not constitute a breach of planning control. In order to succeed on this ground it needs to be determined whether the storage of the items, including a static caravan, water container,

trailer, wooden shed and attached raised deck and ancillary purposes is a material change of use for which planning permission is required. In this case it is important to clarify that the alleged breach relates to a material change in use of the land rather than operational development. Therefore, the appellants' arguments relating to whether individual items require permission are largely immaterial since the key question is whether their storage on the land constitutes a breach of control against which the Council has taken enforcement action.

2. The planning history of the site, including the grant of planning permission for a container for agricultural use on the land, shows that the land has previously been used for agricultural purposes. This is not a matter of contention between the main parties and therefore, the key question is whether or not that use has changed to the mixed use identified in the enforcement notice.
3. The evidence before me demonstrates that a static caravan has been stationed on the land. The appellants contend that it has never been used, for residential or other purposes but that does not change the fact that it is stationed on the land and appears to be quite capable of being used for human habitation, having the facilities to serve such a purpose. In addition, it is clear from the evidence before me that other items, including the water container and trailer have also been stored on the land.
4. The appellants argue that the "shed" identified in the notice is, in fact, a moveable shepherd's hut that is on wheels and not attached to the ground. However, the Council's description has enabled the appellants to identify the disputed item which, irrespective of its description, has clearly been stored on the land. As such it forms part of the alleged breach. The description of the "shed" can be amended and since there is no dispute that it is present on the land this can be done without causing injustice to the appellants.
5. It is also contended that the "raised deck" is a flat-roofed animal shelter used for housing pigs. Although the area under the deck appears to be capable of being used for housing pigs, at the time of my visit it was not being used for that purpose. It is quite clearly a timber raised deck area associated with what the Council describes as a shed. Consequently, I find that it is part of the alleged breach of planning control in this case. I agree with the appellants in that it does not appear to be physically attached to the shed/shepherd's hut, but nonetheless, it is part of the material change of use of the land. Since there is no dispute that the deck is present on site the notice can be amended to reflect the fact that it is not attached to the shed without causing injustice. Some of the other items listed in the notice are also present on the land and also form part of the unauthorised mixed use.
6. I understand that part of the appeal site has previously been the subject of a planning application, but the items described in the enforcement notice are situated in various locations across the wider site which is a single parcel of land. Therefore, although not every part of the red land is being used for storing various items it is entirely correct that the red land has been identified as the land to which the notice relates. Parts of that land may be used for agricultural purposes, but that does not mean that the alleged mixed use of the land for agriculture and other used is not a breach of planning control that has occurred on the wider parcel of land.

7. The appellants have drawn attention to advice previously given by the Council. However, it is clear to me that as a consequence of the continued unauthorised use of the land and resultant harm caused, the Council has considered it expedient to take enforcement action.

Conclusion

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

Formal Decision

9. I hereby direct that the enforcement notice shall be corrected by:
- a) the deletion from paragraph 3.1 of both references to the words "shed and attached raised deck" and the substitution therefor of the words "mobile hut and associated raised deck"; and
 - b) the deletion from paragraph 5.3 of the words " shed and raised decking" and the substitution therefor of the words "mobile hut and associated raised decking"
10. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR