



Appeal Decision

Site visit made on 25 January 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Appeal Ref: APP/D0840/C/20/3257241

Land known as Garden Field, Boat Cove Lane, Perranuthnoe, Penzance, Cornwall TR20 9NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Kathleen Hawkins against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 7 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of agricultural land to a mixed allotment and leisure use and for the stationing of a caravan in connection with that use.
 - The requirements of the notice are:
 - 1) Cease the use of the land outlined in red on the attached plan for a leisure use and for the stationing of a caravan associated with that leisure use.
 - 2) Remove from the land outlined in red on the attached plan the caravan.
 - 3) Remove from the land outlined in red on the attached plan any items or domestic paraphernalia not associated with the agricultural use of the land, to include the fire pit, seating benches and picnic table.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At paragraph 3 deletion within the allegation the word "allotment" and substituting it with "agriculture" and deleting the words "and for the stationing of a caravan in connection with that use";
 - At paragraph 5(1), deleting the words "and for the stationing of a caravan associated with that leisure use";
 - At paragraph 5(2) deleting the requirement that states "remove from the land outlined in red on the attached plan the caravan"; and
 - At paragraph 5(3) deleting the word "domestic".
2. Subject to the corrections and variations, the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Ms Kathleen Hawkins against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

4. I carried out an unaccompanied site visit and viewed the site from the adjoining footpath.
5. As I have explained within the header to this decision, the fees for the ground (a) appeal and deemed planning application have not been paid. I am not therefore considering the case with respect to the planning merits as have been raised by a number of interested parties.

The Enforcement Notice

6. By way of background, a notice relating to this same land was issued in March 2019. The Inspector who determined that appeal quashed the notice because it was invalid and could not be corrected. The flaw included that the notice did not allege with sufficient clarity, what the breach of planning control was. The appellant has suggested that the notice in the present case is also defective in a number of respects. I have a duty to ensure, notwithstanding what matters are explicitly raised, that the notice is in order.
7. The alleged material change of use is described as a "mixed allotment and leisure use", but also includes the "stationing of a caravan". The stationing of the caravan on land if it is mobile, is not in itself "development" as defined in S55(1) of the Act. That matter was raised by the Inspector who dealt with the previous appeal. The wording on the notice qualifies that the caravan is there "in connection with" the alleged use. It is not necessary to include reference to the caravan within the allegation but on its own, this would not be a significant concern to the form of the current notice. Paragraph 5(1) requires cessation of the leisure use and "the stationing of a caravan associated with that leisure use". The evidence submitted by the Council does not show that the caravan is only attributed to the "leisure use" and it would appear to be there as part of the alleged mixed use of the site. It has been held that where there is a mixed use, it is not open to a Council to decouple elements of it in the allegation. The use is a single mixed use with all its component activities. I will return, to this. However, I consider that reference to the caravan within the allegation is unnecessary and confuses matters given that it implies that the act of stationing the caravan is a breach of planning control.
8. The notice is clear, in alleging that a mixed use has taken place. Furthermore, only part of the alleged mixed use is required to cease, that being the leisure use, as set out in requirement at paragraph 5(1). There is no need and it would be wrong particularly in the context of a mixed use, to try and find a Use Class¹ into which the component parts fit as suggested by the appellant. The normal meaning of the term "leisure" in my view is the use of free-time for enjoyment, and pleasure without the pressure, demands or deadlines imposed due to work or other duties. This is a wide definition. The Council has also referred to a legal authority of *Pitman & Others v SSE & Canterbury* [1989] JPL 831 which related to the change of use of agricultural land to "leisure plots". My view, based on various dictionary definitions as well as my own logical

¹ The Town and Country Planning (Use Classes) Order 1987

understanding of the term, is consistent with that case. Requirement 5(1) in that respect is clear.

9. By requiring only part of the mixed use to cease, due to the provisions of S173(11) of the Act, any remaining part of the use not required to cease will be deemed to have planning permission once the requirements of the notice have been complied with. This would therefore mean that the "allotment" use as set out within the allegation would be authorised after full compliance. The term "allotment" has come about due to the process of allocation of plots of land often by a municipal authority to residents wanting to grow crops. In this context clearly in my view such use relates to the use of the site for growing crops and in this case keeping bees. It is not in dispute that these activities fall within the definition of agriculture at S336 of the Act as including:

"horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes."

10. The ordinary person on the Clapham Omnibus, should it be diverted to Perranuthnoe, would understand the difference between leisure activities that have nothing to do with agriculture and agriculture that also happens to be a leisurely activity taking place on what may conversationally be called an "allotment". It would be clearer however for the allegation to refer to a mixed use of the land for "agriculture and leisure use" and that would tie-in more closely with the requirements.
11. The requirement at 5(3) also includes the term "domestic paraphernalia". There is no allegation that a "domestic" use has taken place and again, the appellant has understood that. The purpose of this part of the requirement is clearly to seek removal of paraphernalia other than that connected to agriculture.
12. I have broad powers under the provisions of S176(1)(a) of the Act to correct any defect, error or misdescription if it would not cause injustice to the appellant or the Council. Reference to the caravan within the breach of planning control confuses matters. It should be deleted to make the notice overall clearer. I can also replace "allotment" with "agriculture" in the allegation at paragraph 3 and remove "domestic" in paragraph 5(3). These corrections make the notice more logical and do not change its meaning or increase its scope. They will not cause injustice to the appellant or the Council.

The Appeal on ground (b)

13. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. I have addressed some of the matters raised under this ground of appeal, above with respects to getting the notice in order.
14. Of the remaining matters raised, the appellant refers to the requirements to remove physical items which is more properly considered under ground (f). Furthermore, there is no dispute that as a matter of fact, some of the items which the Council suggest have been used as a part of the alleged material

change of use, are in fact on the site. Even if some items were removed prior to the issue of the notice such as the trampoline, that may not affect whether the use has actually taken place at some time before that.

15. Some of the issues raised under ground (b), may be more relevant to whether these items have enabled a material change of use to occur. That is therefore more pertinent to the appeal on ground (c).

16. The appeal on ground (b) fails.

The Appeal on ground (c)

17. The appeal on this ground is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.

18. Items that are present on the site such as the fire-pit and the wooden "seating benches" may be remnants of a previous use of the site for camping. However, it is not demonstrated that they exist for agricultural purposes. These and the picnic table may well have dual purposes but they are also not clearly required for agricultural activities. The Council's photographs from June 2018 show that these and the presence at that time of a large trampoline with very little indication of any obvious agricultural activity taking place. Reference by the appellant is also made to a small football goal. These items indicate that something other than agriculture had been commenced and the description of a "leisure" use captures that activity.

19. The photographs are a snap-shot in time. However, they show along with the previous admissions that the site had been occasionally occupied for sleeping overnight, that as a matter of fact and degree the character of the site had changed. The tidying up of the site ironically as a precursor to bringing it back into productive agricultural use, may well have emphasised the change in character but that then does appear to have been followed by using the land as a place to play, to sit and enjoy the scenery as one would in a domestic garden.

20. The notice does not allege that the use has included residential occupation of the caravan or that the occupation occasionally by camping in tents is part of the material change in use. However, some of the items on site could be remnants of that occupation. Whether or not they are, they appear to have at times changed the appearance and natures of activities on the site such that it is not just a field used for agriculture. That additional activity appears to have been use for leisure purposes, for the recreation of those using the land.

21. I therefore consider, on the balance of probabilities, that as a matter of fact and degree the material change of use as alleged has occurred. The appeal on ground (c) therefore fails.

The Appeal on ground (f)

22. The appeal on this ground is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary. The notice does not require the cessation of the breach of planning control. It under-enforces the breach therefore and, as confirmed by the Council, the purpose of the notice is remedy the harm caused.

23. It is clear from the representations that have been submitted, that the

presence of the caravan on the site has caused concern locally. However, as I have explained above, the bringing of a caravan onto the site would not in itself be development requiring planning permission. This may well have been the most obvious sign of something happening on the field whatever purpose the land and the caravan on it, were being put to. Caravans, because they are designed to be lived-in, can be perceived as being used for residential purposes even when they are not.

24. The Council has explained to the appellant in correspondence prior to issuing the enforcement notice that use of a caravan in connection with agricultural activities on the land only, would not be development. It is not clear from the information provided that the caravan has been used only for one aspect of the alleged breach of planning control or the other. Its use cannot be separated out in this way as relating to only one part of the mixed use of the site overall. However, on the face of the Council submissions, it would appear that some items that were being stored in the caravan such as "spade and fork, tools, boots, watering can and toolbox", can all reasonably be considered as necessary for use when cultivating the site. The field is remote. There is nowhere else on the land to store agricultural implements in the dry.
25. Once the requirement to remove the caravan was complied with, bringing it straight back and to use it in connection only with agriculture, would not be a breach of planning control or a breach of the notice. That is a scenario that I consider is highly likely to happen and there is clearly some justification in this remote location for doing so. Requirement 5(2) exceeds what is necessary to achieve the purpose of the notice.
26. The fire-pit, seating benches and picnic table are not obviously related directly to any agricultural activities. The appellant's evidence does not demonstrate why they are necessary and indicates that they are remnants of another use, that being occasional camping. I am not considering here whether an occasional camping use would be lawful which can be considered under the provisions within S191 and S192 of the Act. As a matter of fact and degree, it seems to me that these items could have a dual purpose including facilitating the leisure activities as alleged and so it is justifiable to seek their removal in order to achieve the cessation of that use.
27. I therefore consider that the appeal on ground (f) should succeed to the extent that I shall delete requirement 5(2) but otherwise the requirements are upheld, subject to the corrections that I have previously explained.

Conclusion

28. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the injury to amenity. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

A Harwood

INSPECTOR