



Appeal Decision

Site visit made on 25 January 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/U1430/C/20/3252716

**Land at Cygnet Fields, Swanfield Farm, London Road, Hurst Green
TN19 7QS**

- 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 Eric G Smith against an enforcement notice issued by Rother District Council.
- The enforcement notice, numbered MKN 345, was issued on 4 March 2020.
- The breach of planning control as alleged in the notice is the material change of use of the Land from agriculture to a mixed use of agriculture and the stationing of a static caravan for residential use and the creation of fenced domestic garden space unconnected with agriculture.
- The requirements of the notice are:
 - (i) Cease the use of the Land for the stationing of a static caravan for residential purposes
 - (ii) Cease the use of the Land for any purposes unconnected to the agricultural use of the Land
 - (iii) Remove from the Land the static caravan.
 - (iv) Remove from the Land the fencing used to create a domestic garden space.
 - (v) Remove from the Land all non-agricultural items, to include, but not limited to Non-agricultural vehicles, garden sheds, greenhouse, garden furniture, ornaments, domestic garden machinery, tools, potted plants and other residential chattels.
 - (vi) Remove from the Land all stored domestic chattels.
 - (vii) Remove all other waste and materials from the Land arising from compliance with the steps above and return the Land to its former condition as agricultural land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) 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. The appeal is dismissed and the enforcement notice is upheld.

Procedural matter

2. Most of the evidence provided by the appellant, generally relates to why the steps required by the notice are considered to be excessive. However, the appellant's appeal statement makes reference to the construction of the shed and greenhouse, having been undertaken more than four years ago. This would more correctly be considered under ground (d). This ground has not been pleaded and no additional evidence has been submitted. Nonetheless, I shall

deal with it within my reasoning and this ground has been added to the above heading.

Reasons

Appeal on grounds (d) and (f)

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the use of the land for the stationing of a static caravan for residential purposes and any purposes unconnected to the agricultural use of the Land cease, and specific steps are taken to restore the land. I therefore consider that the purpose of the notice is to remedy the breach of planning control.
4. It is the appellant's view that the steps specified by the Council are excessive and it is submitted that the residential use of the caravan has ceased, and it is now being used as a restroom and accommodation during lambing. From my site visit the caravans current use was not clear. Nevertheless, it retains all of the facilities required for residential purposes.
5. From the Council's enforcement report, they became aware that the caravan had been brought onto the site during 2017 and was in occupation by Ms Rita Smith at that time. A subsequent planning application (RR/2017/2722/P) was made to change the use of the caravan, from mess facilities to a temporary home for an agricultural worker. This application was retrospective and was later withdrawn following advice from the Council. The Council took no further action against the caravan at this time, although the reasons for this are unclear.
6. The site history indicates that planning permission (RR/2003/1148/P) was granted for 2 sectional garages and a portacabin, to be used in part, as a rest room and for the storage of animal feed. The planning contravention notice served by the Council confirms that the caravan was brought onto the site during 2017. I have no evidence before me, to suggest that the previously permitted rest facilities are no longer available, or that the caravan was brought onto the land for any purpose, other than to enable residential occupation of the site.
7. With regard to the ground (d) appeal. An appeal on this ground seeks to demonstrate that on the balance of probability, at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by s171B for operational development. The burden of proof lies on the appellant.
8. The appellant contends that construction of the shed and greenhouse was undertaken more than four years ago. No additional evidence to substantiate their claim has been provided. The Council has provided a number of aerial photographs, although these alone are of little assistance. In my judgement, and on the basis of the evidence, the appellant's evidence falls short of

discharging the burden of proof. Moreover, s173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. Therefore a notice that is directed at a material change of use (MCU), 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, or they would be permitted development or immune from enforcement, so that the land is restored to its condition, before the change of use took place.

9. In this instance the allegation is a material change of use from agriculture to a mixed use for the stationing of a caravan for residential purposes. From my site visit, the fenced garden space appears to be used for recreation and providing a grassed exercise area for the appellant's dogs, rather than for any agricultural activity. The fencing comprises Heras style fencing with a low level fabric screen. The greenhouse is of a scale commonly found in gardens and the shed used for storage of mainly domestic items, including a lawnmower and various items of equestrian equipment. The greenhouse, shed and the stored potted plants, all add to the residential character of this area of land.
10. Outside this area, there were also a variety of items stored on the site and within the existing barn. Whilst, it is acknowledged that some of these may be related to agricultural activities, there was also a significant quantity of domestic items not related to agriculture. I have had regard to the appellant's view that other farms may have some non-agricultural storage. However, whether this would amount to a material change of use is a matter of fact and degree, depending on the circumstances in each case. To my mind the appeal site, has no associated dwelling, and the scale of the non-agricultural storage could not reasonably be considered to be de minimis.
11. Accordingly, I find that on the balance of probability, the caravan, garden area, shed and greenhouse, together with the domestic storage, have all been provided solely for the purpose of facilitating the residential use of the land, rather than for any lawful agricultural purpose.
12. Consequently, for the above reasons their removal are the minimum steps required to restore the land to its previous condition and thereby remedy the breach. Therefore, I do not consider that the steps required by the notice exceed what is necessary to remedy the breach of planning control. The appeal, on grounds (d) and (f) therefore fail.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR