

Appeal Decisions

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2021

Appeal A Ref: APP/D0840/C/19/3240588

Appeal B Ref: APP/D0840/C/19/3240589

Land at Pleasant Streams Barn, Lower Sticker, St Austell PL26 7JL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Lesley Hedges against an enforcement notice issued by Cornwall Council ('the notice').
 - Appeal B is made by Mr Anthony Hedges against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN18/00723, was issued on 10 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a field used for agricultural purposes to holiday use for the stationing of caravans and tents.
 - The requirements of the notice are (1) Cease the use of the land for the stationing of caravans and tents for holiday purposes; (2) Permanently remove the caravans and tents from the land; (3) Dismantle and remove the toilet/shower block marked in purple on the attached plan; (4) Dismantle and remove the compost toilet/shower block marked in green on the attached plan; and (5) Remove the electric hookups.
 - The period for compliance with the requirements is 2 months.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mrs Lesley Hedges and Mr Anthony Hedges against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellants were of the view that a site visit was not required, given the grounds of appeal. The Council was consulted on this, and agreed with the appellants. Given the grounds of appeal, the situation regarding the Covid-19 pandemic, and that neither party would be prejudiced, I decided that no site visit was necessary.

Grounds (b) and (c)

4. An appeal on ground (b) is that the matters alleged in the notice have not occurred, and on ground (c) that those matters (if they occurred) do not constitute a breach of planning control. However, the arguments put forward on these grounds concern aspects of the requirements rather than the allegation. Such matters are more properly dealt with under ground (f), which was not pleaded, but I shall briefly address them here.

5. The appellants do not contest that the change of use, alleged in section 3 of the notice, has occurred. They contend however that the showers and toilets provided on the site in 2017 are movable and temporary, but observe that there is no mention of showers and toilets in section 3, and hence the recipients of the notice would not know what the breach of planning control is as required by s173(1)(a) of the Act. In reality, the provision of temporary facilities to facilitate a material change of use is not in itself development and hence does not need to be included in the allegation. So far as the requirements are concerned, the showers and toilets brought to the site to facilitate the use can be required to be removed, as confirmed by *Kestrel Hydro v SSCLG* [2015] since the facilities are integral to, and part and parcel of, the unauthorised use. There is no need to specifically refer to them in the allegation. Moreover, as they are referred to amongst the requirements in section 5 of the notice, the appellants would be quite aware of their 'role' in the breach.
6. On ground (c), there is no claim that the matters comprised in the allegation are not a breach of planning control. What the appellants state is that the use of the land for the stationing of tents for periods of up to a total of 28 days in any calendar year is lawful¹, and argue that variations should be made to the requirements of the notice to reflect that. However, the requirements of a notice do not interfere with or take away lawful use rights, including those granted by the GPDO. No variation of the requirements is required. So far as the provision of temporary facilities associated with exercising GPDO temporary use rights, such facilities would be ancillary to the use granted planning permission by the GPDO and hence would be lawful. Again, no variation of the requirements is necessary to secure this.

Ground (d)

7. This ground of appeal is that, at the time when 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. The onus is on the appellants to prove their case, on the balance of probability.
8. The relevant time period in respect of the alleged breach, set out in section 171B of the Act, is ten years. The Council's position is that it acknowledges that the breach of planning control occurred for sufficient periods from 2010 to the date of issue of the notice. Therefore, as the Council agrees², if it can be shown on the balance of probability that the breach of planning control occurred before the 10 October 2009 ('the relevant date') and continued for sufficient period during 2009, there would have been a breach of planning control for the required ten-year period. From 2010 it appears that the use has taken place from the Easter holidays until September or October each year.
9. On the relevant date, permitted development rights existed for the temporary use of land as a camp site for a period up to 28 days in any calendar year. At that time, this right was set out in Class B of Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended). The use for the permitted 28 days for tent camping would not therefore have been a breach of planning control subject to enforcement. However, the use of the land for tents and caravans would have been a breach.

¹ Class B of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) (England) 2015 ('GPDO') sets out permitted development rights relating to the temporary use of land.

² Paragraphs 8.7 and 8.8 of its Statement of Case

Therefore, it is necessary for the appellants to show, in addition to the use commencing prior to the relevant date, that the land was used for tent camping purposes for a period in excess of the permitted development rights in 2009, or that it was used for a sustained period for tent and caravan camping.

10. The appellants have not submitted sworn affidavits or statutory declarations in support of their case. Whilst these would carry more weight than simple written submissions, there is nothing to require that a successful case under Ground (d) is reliant on their being submitted. The appellants' assertion is that the land was used for the purposes alleged for more than 28 days in 2009.
11. The appellants have provided evidence, in the form of invoices from Wernick Hire and Andy Loos (Appendices 12 and 13, respectively), to show that they hired a mobile shower unit and effluent tank and toilets to serve people staying on the land. The former shows a hire period from 17 July to 23 September 2009 and the latter from the 16 July to 31 August 2009. A statement from the latter company, dated 5 October 2009, appears to include a charge of £13.80 for the 30 September 2009; the relevance of this is, however, unclear. Notwithstanding this latter point, precise and unambiguous evidence has been submitted to show that the facilities one would expect to see provided to serve the alleged use were on the site for a period in excess of 28 days starting from 16 July.
12. In paragraph 1.8 of the appellant's response, the point is made that even if the evidence provided of bookings and actual use is not sufficient, the facilities to use the land as a campsite, that is the stationing of the mobile facilities, were available throughout a period in excess of 28 days. Therefore, the Council would have been able to take enforcement action against the use and thus, by extension, the use was continuous.
13. My finding on this point is that the Council would not have been able to take enforcement action against the use of the land for camping/caravanning in these circumstances if the land was not actually being used for this purpose. The presence of the mobile facilities does not equate to the use of the land, and its presence could easily have been seen as the temporary storage of the facilities, but in any case I consider that the mere presence of the mobile facilities on the land, without evidence of actual use, would not have enabled the Council to enforce against a material change of use of the land from its lawful agricultural use. So far as their presence was not related to agricultural use, their impact on the definable character of the use of the land would have been *de minimus*. It is, therefore necessary to go on to assess the submissions relating to the actual use of the land.
14. Appendix 1b to the appellants' statement consists of a number of emails from parties regarding staying at the site. These fall into three categories, those people that: are making general enquiries; are making bookings; and are demonstrating that they stayed at and used the land in the manner set out in the notice.
15. To prove the case, it is necessary to demonstrate that the land was used. In this regard, the evidence from the latter group is most pertinent. R Marshall, suggests they would stay at the site from 5 August 2009 to 19 August 2009, and this is backed up by a series of dated photographs, (Appellants' Appendix 3), that show the site, a tent and some of the hired facilities.

16. Although the photographs were undated, the appellants' Appendices 2a and 2b show on the balance of probability that Andrew and Patricia Lock stayed at the site from 20 August 2009 to 26 August 2009.
17. The first category consists merely of requests for information regarding availability and the like, which provide no evidence of the actual use of the land.
18. The remainder of the emails in Appendix 1b fall within the second of the three categories. They include the booking of a touring caravan onto the site by Natalie Schramm for the 26 August 2009 to 29 August 2009, confirmation from Neale Milburn of arrival on the 2 August 2009 for 6 nights and the booking of a tent pitch for the night of the 16 August 2009 by Stuart Mosley. Similar enquiries were made by Rachel Challoner, Katy Dixey, Keith Deakin and Andy Thomas, some of which were via external booking sites. In addition, a Mrs M Farmer enquired about a pitch for a touring caravan. Whilst all this provides evidence of an intent by persons to use the land, there is no evidence that they did so.
19. A review on the ukcampsite.co.uk website shows that the site was used by 'Groundplan' during July 2009. The date and duration of the visit is not given. However, it suggests on the balance of probability that the campsite was running at some point during July but nothing more.
20. A chart has been provided by the appellants, (Appendix 1a), entitled '2009 season confirmed bookings'. This purports to show that all of the correspondents from Appendix 1b not only expressed interest in staying, or said that they would be doing so, but actually stayed at the site. However, save for those specifically mentioned above, there is a lack of adequate corroboratory evidence to show that the people referred to actually stayed at the site. Furthermore, although not by itself fatal to the appeals, I note that the chart entry for Andy Thomas does not correspond with his enquiry in Appendix 1b.
21. At the end of the 'Bookings and Season's Opening Times' section of the Appellants' Appendix 20³ to their Grounds of Appeal, is another table. This includes details of the start and end date of the seasons from 2009 to 2019, and an estimated total number of bookings for each. For 2009, the latter is given as 400, with a start date of the 5 July and an end date of 31 October.
22. This does not chime well with evidence submitted elsewhere. For example, the start date is prior to the dates that I have been given from when toilet and shower facilities were provided on site. It may be possible to run a campsite without such facilities, but no mention of this being the case is made elsewhere. Secondly, the end date does not accord with evidence in paragraph 1.22 of the Appellants' Grounds of Appeal. This relates to an Enforcement Officer's visit to the site on 2 October 2009, where it is stated that the reason the Officer saw no tents, caravans toilets or showers on site was that "the campsite had ceased to operate for the season at the end of September". Put simply, the submitted evidence is not precise and unambiguous and does not substantiate the claimed estimated total of 400 bookings for this 2009 season.
23. The evidence shows that the site was registered with various websites⁴, a website was created for the business and a Google 'ad campaign' was run. However, this does not provide evidence of the dates of operation in 2009 or, most importantly, the number of days that the use was carried out in that year.

³ Statement on behalf of the Appellants – Pleasant Streams Farm Camping statement of operations, 24 October 2019

⁴ See paragraph 1.11 of the Appellants' Grounds of Appeal

24. The receipts for the purchase of the shower curtains, toilet brushes and red diesel provide circumstantial evidence to support the use of the land for camping and caravans during 2009, but do not provide evidence of the period that the land was so used.
25. It is said that, given the relaxed nature of the site, what has been provided in terms of information about bookings probably represents an under-estimation of its use. Whilst this might be the case, it does not provide substantive evidence in support of the ground (d) case. Similarly, with regards to those people that might have booked by phone or arrived unannounced, without evidence this cannot be used to further the appellant's position. I sympathise with the appellants' comment that as over ten years have passed since the use commenced, evidence that might have once been available no longer is, but it is for the appellant to satisfy the burden of proof.
26. I have not looked beyond 2009 for two reasons: firstly, because if the use could not be proven for this year then neither could the required ten years of continuous use; and, secondly, because the Council do not query the period from 2010 to 2019. For this reason, I do not consider it necessary to address other matters arising from that period, including whether the Council was misled about what was occurring on the site.

Conclusion on ground (d)

27. The appellants have put forward evidence to show that on the balance of probability, the use of the land for camping commenced sometime in July 2009. This was probably after the delivery of the shower and toilet facilities, around the 17 July. These facilities were, on the balance of probability, on the site for a period in excess of 28 days in that year. However, I have not been provided with sufficient evidence to show that, on the balance of probability, the land was so used for tent camping for a period in excess of 28 days during that year, or that it was used for tent and caravan camping for any sustained period.
28. I note also the argument that a wooden toilet and shower block erected in 2010 is immune from enforcement under section 171B(1) of the 1990 Act, but it is well established that such a structure, having been erected to facilitate the unauthorised use and being part and parcel of it, can be required to be removed even if it might otherwise have become immune from enforcement after 4 years.
29. For the above reasoning, the ground (d) fails.

Ground (g)

30. The case to be made under this ground is that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
31. The appellants consider that the 2 months compliance period given in the notice is insufficient. The reason given is that the campsite already has bookings for the 2020 season. As the 2020 season has drawn to a close, the 2-month period for compliance for the varied notice is sufficient.

Roy Curnow

INSPECTOR