



Appeal Decision

Site visit made on 4 March 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2021

Appeal Ref: APP/X1118/C/20/3259502

Land at Broad Park Farm, Bugford, East Down, Barnstaple, Devon EX31 4NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dominic McGuire against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is:
"within the last 4 years, unauthorised development consisting of the erection of dwelling (tent and yurt) and toilet structures.
Within the last 10 years unauthorised change of use consisting of the use of land for residential purposes and the storage of caravans and other non-agricultural vehicles & items"
 - The requirements of the notice are:
 1. Cease the use of the land edged in red on the attached location plan for residential purposes,
 2. Remove the tent and yurt from the land,
 3. Remove the timber toilet structures from the land,
 4. Remove the sink structure and shower tray from the land,
 5. Remove the caravans from the land,
 6. Cease the use of the land and the building edged in blue on the attached location plan for the storage of non-agricultural items and domestic paraphernalia,
 7. Remove all non-agricultural vehicles and items from the land,
 8. Remove all non-agricultural items stored in the building edged in blue of the attached location plan from the land,
 9. Remove any debris and/or rubbish resulting from compliance with steps 1 – 8 from the land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

The Notice

2. The notice alleges both the erection of buildings and a material change of use, making it clear what time limits for taking enforcement action within s171B are

applicable. It is also clear which elements of the allegation relate to which form of development as defined with s55(1) of the Act.

3. The erection of a dwelling as alleged is clarified within brackets as being the "tent and yurt". I found this description a little confusing however I understood which object on the site the notice related to and the Council clarify within their statement that there is a tent with a yurt inside it. I will refer to this just as 'the yurt'.
4. Other aspects of how the allegations have been worded, I will deal with in relation with the appeal on ground (b).

The Appeal on ground (b)

5. 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 need to reach a view on the balance of probabilities.
6. The appellant disputes that residential use of the site has taken place. Other challenges to the notice which are appropriate to consider here include whether, even if the matters stated have taken place, the allegations have been correctly made. Success on this ground may not lead to the quashing of the notice as I can consider the use of my powers under s176(1)(a) but only where it would not cause injustice to the appellant or the Council.
7. This ground of appeal as set out in s174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. The appellant indicates that some of the matters of concern to the Council may have been taken from the site. However, an appeal on ground (b) cannot succeed simply on the basis that the activities that had taken place or structures that did at some point prior to the issuing of the notice exist, have been removed.

Operational development

8. First of all, the yurt is a substantial structure which the appellant concedes in their appeal statement, bearing in mind s55(1) of the Act, has involved operational development. I saw that the internal shelter with a trellis frame and fabric cover, is positioned on a robust timber deck. The deck, in turn, is raised above the ground and, from what I could see, rests on tyres around its perimeter. Around the internal, central shelter there are poles which are connected in a frame and which appears to hold up the external fabric cover. That frame is supplemented by posts that are secured into the ground with fence-post spikes and I saw the substantial solar panels which are secured to the outer structure. A metal flue is attached to the structure to take emissions from the stoves. All of these elements of the yurt are currently part of the same single structure.
9. Given the substantial size, having been constructed in situ, by being physically fixed into the ground and due to its attachment because of its own weight, it is a permanent structure. There is no suggestion that the yurt is or can be moved around and the appellant has referred to engineering work that was required to level off the land in order to position the structure. Taking account of the settled case law on these matters which have been referred to me, this has involved operational development to which the 4-year time limit applies.

10. The separate toilets have involved the construction of raised platforms with walls, roofs and steps up. I saw 2 when I visited one of which is within a wooded area within a short walk of the yurt. The other is close to the front of the linhay although the Council confirm that it is not subject of the notice as it has been in place for more than 4 years. The notice plan indicates that the other had been close to the pond.
11. The first allegation, at least to the extent of how it refers to the act of development within s55(1), is correct.

Use

12. With respect to the description of the yurt and toilet structure as a dwelling, there is no definition in law of what a dwelling is. It has been held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The yurt contains some kitchen facilities with a sink although no oven or hob that I could see or that has been referred to. There are wood-burning stoves which may possibly allow for some rudimentary cooking. A bath is outside of the central part but under the outer canvas with what appears to be a water-supply. There is furniture within the inner part which seems capable of converting for sleeping-on (sofa-beds or futons). There are some other items such as music system and domestic trinkets.
13. The yurt does not include a toilet which is a significant omission from what I consider are the distinctive characteristics of a dwellinghouse. The notice acknowledges this by referring to "toilet structures". Those toilet structures are located distinctly separate from the yurt, within the field and next to the linhay. They would appear to be available for users of the site as a whole rather than just any potential users or occupiers of the yurt.
14. Any residential use of the yurt would be at a rudimentary level including multi-purpose furniture rather than permanent beds, very limited food preparation and washing facilities. However even taking account of the Council's photographs, which do give a more domestic appearance than was apparent when I visited, this appears to be more akin to camping within a building such as may occur in a bunkhouse or bothy. As a matter of fact and degree, this leads me to the view that this is not a dwellinghouse, as alleged.
15. There are 2 uses set out in the second part of the allegation, residential use and "storage" of caravans and other non-agricultural vehicles and items. This is not expressed as a "mixed" use which would also require, as part of the appeal on ground (c), the consideration of the planning unit. Looking at this part of the allegation alone, it is not clear how the "residential" use is alleged to have taken place. Alongside the first part of the allegation, it may be that it is referring to the residential use of the yurt given that the Council have alleged that it is a dwelling. The Council's statement however indicates that they consider that the caravans have been used as part of the residential use but that is not what is alleged on the notice. The caravans are stated as being stored which, with respect to 2 of them at least, does not seem to be accurate given that they appear to have had some use.
16. The site within the red-line as shown on the notice plan, is a long tract of the valley side that covers, according to the appellant, an area of 3.46ha. The appellant says that it is used for forestry and some agriculture. Although the

amount of agricultural activity on the land is only apparent due to the presence of beehives, that appears to be very a limited use. However, there are large number of trees on site which appeared to me to be mainly planted in a regular pattern rather than in a more random form had they self-seeded naturally. Many of the trees include protection around their trunks indicating that they have been planted in a managed way.

17. There were several neat piles of logs stacked around the site at the time of my visit, the appellant was present (although we did not discuss the case) and carrying out work to some trees at that time. What I saw makes the appellant's statement that they have planted more than 6000 trees including through a Woodland Creation Grant and Woodland Management Grant from the Forestry Commission, credible. Around 0.75ha of the site includes trees that are coppiced. I am also referred to the separate appeal decision (APP/X1118/W/20/3255229) in which the rights under Part 6, Class E of the GPDO¹ have been confirmed for a steel portal building for storage of forestry equipment. I am conscious that the Inspector in that case did not need to consider the extent of any forestry need for the building and so the appeal decision appears to be of limited weight in terms of assessing what actual forestry activity has been taking place.
18. The appellant states that other people work on the site and that the yurt is used as a shelter and welfare office. Given the nature of it, what it contained in various photographs provided and what I saw, is a realistic suggestion. It is not for me to assess the planning merits of the case as ground (a) has not been pleaded. However, forestry or woodland management does appear to have been taking place and should have been addressed within the allegation on the notice in my view as it would appear, on the balance of probabilities, to be a primary use of the land or part of the land.
19. There is no evidence to contradict the appellant's evidence, including a recent Council Tax Bill, that indicates that they and their family live permanently at the address given in Bristol and travel to the site to carry out the forestry work. The appellant's own photographs show that his family visit the site. No explanation is given regarding where they all stay when they visit for these reasons and it would seem a long drive home after working hard on the land. The photographs provided by both main parties indicate that there has been a degree of domestic activity with the appellant's family being present at times. Within the caravans, from limited photographic evidence it would appear that 2 of them were laid out and potentially available for some occupation. Another contained bank of batteries and external solar panels and so would seem to have had more of a utilitarian purpose. Domestic items were undeniably in storage within the lincage and at the time of my site visit, I saw a box of toys under the yurt. The appellant does refer to temporary occupation within permitted development allowances. It seems probable that some residential use of the site has occurred, whether that was within the remit of any permitted development rights, is a matter for the appeal on ground (c).
20. It is not clear to me why the Council considers that the vehicles on site are not used as part of the activities on the land rather than being there simply for storage. The Range Rover shown in the Council's photographs was in active use when I visited and the appellant has provided the statutory off-road notice

¹ Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

and that would not seem to be just stored on the land. I also saw a digger or tractor which would serve a useful purpose in connection with what appears to have been taking place. However, there is no dispute that 1 of the caravans and some items within the linhay have been stored which do not directly relate to forestry.

Conclusions

21. The allegations have not been worded accurately. I can consider correcting them using the broad powers that I have under s176(1)(a) where it would not cause injustice to the appellant or to the Council.
22. With respect to the first allegation, that would be more accurately described as the erection of a building (the yurt) and construction of toilet structures. With respect to the use, depending upon how the issue of the planning unit is assessed, that could more accurately be described as a material change of use to a mixed use of the site for the siting of caravans for residential purposes and for forestry. It seems to me that the yurt is probably used as part of the overall use of the site in a multi-purpose fashion rather than just being there as residential accommodation.
23. The errors on the notice require correction which would significantly alter the scope of what is alleged both in terms of the operational developments and the uses on the land. I am concerned that to assess the uses that appear to have taken place requires a proper understanding and assessment of what the planning unit is that contains any residential use. It is not clear to me that the Council or therefore the appellant have attuned their minds to that, which may be significant or it may not, I cannot judge without representations and evidence about it. Furthermore, because the allegation regarding the yurt from the submitted evidence and what I saw is significantly different from what is alleged, it could have affected whether or not the appellant chose to appeal on ground (a) and therefore pay a fee for the deemed planning application. He may not have wanted to pay a fee to retain a development which is not described in the way he would wish to retain or use it.
24. Due to these factors, the notice is not sufficiently clear or precise. It would be unfair and unjust upon the appellant to correct the notice making it a very different document than had been served upon him.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (c),(d) and (f) do not fall to be considered.

Andy Harwood

INSPECTOR