
Appeal Decision

Site visit made on 7 April 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 April 2021

Land at Appeal Ref: APP/U1105/C/20/3262840

Thorn Park Family Golf Centre, Salcombe Regis, Sidmouth, EX10 0JH

- 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 Mr Malcolm Burrough against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 12 October 2020.
 - The breach of planning control as alleged in the notice is the carrying out of a material change of use of the land from Assembly and Leisure use (D2 Use Class) to a mixed use as Assembly and Leisure Use (D2) and residential use (C3) by the placing on the land of two caravans shown in the approximate positions edged and cross hatched in blue on Plan B attached to the notice.
 - The requirements of the notice are:
 - I) Permanently cease the use of the land for the siting and storage of the two caravans shown edged and cross hatched in blue on Plan B;
 - II) Permanently remove from the land the two caravans shown and cross hatched in blue on Plan B;
 - III) Permanently remove from the land all materials and debris associated with compliance with steps (I) and (II).
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Procedural matters

2. The appellant has expressed concern over the wording of the alleged breach described in the notice which refers to a material change of use of the land to a mixed use of Assembly and Leisure use (D2 Use Class) and residential use (C3). Whilst the appellant accepts that the two structures referred to are caravans, the one closest to the road (Caravan A) is in residential use but is not a dwellinghouse (C3) because it remains transportable and lacks permanence. It falls within the statutory definition of a caravan.
3. In September 2020 an appeal was dismissed against a refusal of an application for a Lawful Development Certificate (LDC) for the use of Caravan A as an

independent dwelling but it was not claimed to be a C3 dwellinghouse. (Ref APP/U1105/X/20/3250786).

4. The appellant states that Caravan B is a caravan not in residential use but is used ancillary to the D2 use of the site as an office and store, and ancillary to the annual temporary use of the land for the Sidmouth Fringe Folk Festival. The appellant is unaware of the evidential basis of the Council's claim which did not form part of the LDC appeal and has not been the subject of any formal investigation, although I note that the Council's 'Briefing Note' states 'To date the owner has never offered an explanation for the sitting (sic) of the second touring caravan.'
5. The appellant considers that the wording of the notice can be corrected without causing injustice to the parties by the removal of the word 'C3' but only if both caravans were in residential use and the Council properly regarded them not to be in C3 use. The appellant points out that as Caravan B is not in residential use, the notice would have to be significantly recast.
6. It is further pointed out that the grounds of appeal can only reflect the breach but the breach will only be known when the appeal is determined indicating that the notice is defective and cannot be amended without causing injustice. Whilst I note that the appellant's preliminary statement includes responses to the allegation as written and also to the allegation as potentially corrected through the deletion of the word 'C3', this alternate approach is not followed through in the main appeal statement which considers grounds based only on a correction of the notice through the deletion of the word 'C3'.
7. The Council relies on an officer's report entitled 'Briefing Note' rather than on an appeal statement and in most circumstances this approach is generally satisfactory as it avoids duplication. However, in this case, the note is brief and appears largely to rely only on the outcome of the unsuccessful LDC appeal. The Council has provided no explanation or response to the points raised by the appellant in respect of the allegation and the appellant is disadvantaged in being unclear about how to respond to the enforcement notice. The Council's silence on this matter also leads me to be uncertain why the notice was drafted in its present form, or the basis of the allegation in respect of Caravan B.
8. The allegation is clearly wrong in respect of referring to the caravans being in a C3 residential use, as C3 explicitly refers to use as a dwellinghouse which is different in planning terms to 'the stationing of caravans for residential use', which is one of the most frequently used forms of wording of such an allegation. The Use Classes Order does not have a use class for a caravan and caravans are subject to separate statutory provisions. Whilst it is possible for a caravan to become a C3 use where it has achieved such a degree of permanence that it is no longer mobile, such circumstances do not apply in this case, as I saw from my site visit that both caravans are touring caravans capable of being transported..
9. A notice should be understandable on its face. In this case there is ambiguity over whether the allegation relates to a change of use of land or reference to a C3 use. There is further ambiguity in that the Council indicates that the period of the breach is said to be in the last 10 years. If the caravan has achieved such a degree of permanency that it became a C3 dwellinghouse, the immunity

period would be four years in respect of the operational development or 10 years in respect of its use as such.

10. I have a duty to get the notice in order if I can and Section 176 provides a power to correct any defect, error or misdescription in an enforcement notice but only where this would not cause injustice. In the absence of any explanation from the Council, who could have withdrawn and re-issued a corrected notice, it appears to me that the notice is inaccurate and incapable of correction without injustice to the appellant.

Conclusion

11. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered.

P N Jarratt

Inspector