



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 27 April 2021

Appeal Ref: APP/W1850/C/19/3228315

Land at Out To Grass, Woodend Farm, Cradley, Malvern WR13 5JW

- 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 Ian Johnson against an enforcement notice issued by Herefordshire Council ('the Notice').
 - The enforcement notice, numbered EN2019/002891/ZZ, was issued on 9 April 2019.
 - The breach of planning control as alleged in the notice is without Planning Permission the unauthorised operational development on the land of buildings comprising a circular timber-framed building and four yurt/tepee-style structures together with the construction of an earth mound, the location of which on the land are shown for identification purposes on the plan attached and marked 'Plan B'.
 - The requirements of the notice are: (1) Permanently remove the building and yurt/tepee-style structures marked 1 and 2 on Plan B from the Land; (2) Remove all rubble and building materials associated with the building and yurt/tepee-style buildings referred to in paragraph 1 from the Land; (3) Remove all hardstanding etc associated with the construction of the building and yurt/tepee-style buildings marked 1 and 2 on Plan B from the Land; (4) Remove the earth mound shown marked 3 on Plan B attached to this notice including all earth and other materials associated with it from the Land; (5) Re-level and re-seed the area where the earth mound is located shown marked number 3 on Plan B attached to this notice and return the Land to its former condition.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) 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. It is directed that the enforcement notice is varied by: the deletion of requirements 1-3 of section 5 of the Notice, 'What You Are Required To Do', that is to say deletion of the words from and including "1. Permanently remove the building..." to and including "...on Plan B from the Land."; and, in the same section, the deletion of the numbers "4" and "5" and the substitution of the numbers "1" and "2", respectively. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. Given the arguments initially put forward under Ground (d), the appeal was to be determined following a Public Inquiry. However, in the light of submissions made by the Council, it was found that the appeal could be determined using the written procedure without prejudice to any party. In the light of these submissions it became apparent that there would be no need to undertake a site visit and that, again, this would not cause prejudice.

3. In its Statement of Case (SoC) the Council stated that its position was that the yurt/teepee-style structures were buildings. Therefore, the appellant had to show that they had been substantially complete for at least 4 years prior to the issuing of the Notice. The Council's SoC sets out that it had been provided with evidence to show that this was the case. It therefore considered them to be lawful and would not be pursuing this alleged breach of planning control.
4. By email dated 3 March 2021, the Council wrote to advise the Planning Inspectorate and Appellant that it would no longer be defending the element of the enforcement notice relating to the smoking shelter. This is referred to as the circular timber framed building in the Notice. As that email made clear, the Council's position is that that this "just leaves the earth bund.
5. I shall, therefore, vary the terms of the Notice through by removing the references to the yurt/teepee-style structures and the circular timber framed building.

Ground (d)

6. From the evidence, in planning terms the appeal site lies in the open countryside. The lawful use of the land is unclear, although I have been given no evidence to find that this is material to the Ground (d) appeal. The earth mound is reported, in the Council's statement, to measure in the order of 40m in length, 20m in width, with a height of 3-4m.
7. An appeal under Ground (d) is made on the basis that, at the date the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters set out in the Notice. Given that the construction of an earth mound is operational development, the relevant time period to achieve immunity from enforcement action is 4 years. Therefore, the onus lies with the Appellant to show that the mound was constructed for 4 years at the time that the Notice was issued, on the balance of probability.
8. The evidence supplied by the Appellant was limited to the Facts set out on the Appeal Form and a list of documentary evidence that the Appellant said he would bring forward in support of his case. This documentary evidence was not submitted. There was no evidence within what was submitted that showed that the earth mound had been constructed for 4 years at the time that the Notice was issued.
9. For its part, the Council states that the earth mound was constructed less than 4 years ago. It cites a visit by an Enforcement Officer in 2016 when it was not there and a visit by a Council Environmental Health Officer in Spring 2017 when it was under construction in support of this position. It also refers to satellite images, though none were submitted.
10. Notwithstanding this latter point, it is for the Appellant to prove his case on the balance of probability. He has not done so. Therefore, the appeal under Ground (d) on the remaining issue of the earth mound is dismissed.

Roy Curnow

Inspector