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## Appeal Decision

Site visit made on 24 June 2021

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 July 2021**

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**Appeal Ref: APP/F2605/C/19/3241997**

**Land at Wretham Road, Great Hockham, Thetford, Norfolk**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Max Serge Gerard Bonneton de Sarlat against an enforcement notice issued by Breckland District Council.
  - The enforcement notice, numbered ENF/47/19/PAR, was issued on 24 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 land used as highway verge and woodland to land used as a leisure plot and for the stationing of caravans for residential use and, without planning permission, a material operation on the Land being the construction and formation of an access to the A1075 Wretham Road.
  - The requirements of the notice are:
    - Permanently cease the use of the Land as a leisure plot
    - Permanently cease the use of the Land for the stationing of caravans for residential and leisure use.
    - Permanently remove all caravans and associated residential, domestic and leisure items and infrastructure from the Land.
    - Permanently close the new access and remove the hardcore and surface materials from the access route and remove the resulting debris from the Land.
    - Resurface the cleared land with grass and restore the woodland area to its original condition immediately prior to the breach by replanting appropriate trees and shrubbery.
  - The period for compliance with the requirements is nine calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision: the appeal is dismissed and the enforcement notice is upheld with the corrections and variations set out in the Formal Decision below.**

### Procedural matters

1. The appellant maintains that he was unable to pursue an appeal on ground (a) because the enforcement notice was incorrectly served as it incorrectly alleges the residential use of the caravans<sup>1</sup>. On my reading of the appellant's Grounds of Appeal, the phrase "incorrectly served" is not intended to comprise an appeal on ground (e) as set out in section 174(2) of the 1990 Act<sup>2</sup>. Rather, on my reading, it refers to the matters alleged in the notice being considered by the appellant to be incorrect in relation to the residential use of the caravans.

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<sup>1</sup> The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

<sup>2</sup> The appeal on ground (e) is that copies of the enforcement were not served as required by Section 172 of the 1990 Act.

2. As I read it, the point being made by the appellant is that the residential use of the caravans referred to in the notice has not occurred as a matter of fact. That causes him to question the legality of the enforcement notice. However, a contention that the matters alleged in an enforcement notice have not occurred as a matter of fact constitutes an appeal on ground (b) as set out in section 174(2) the 1990 Act. The appellant has already made an appeal on ground (b), and I will consider this point under that ground of appeal.
3. Moreover, there is no reason why the appellant could not have pursued an appeal on ground (a) if minded so to do and had paid the necessary fee. It is an accepted facet of the appeal system that an appellant can make an appeal on ground (a) without prejudice to his/her primary position that the matters had not occurred as a matter of fact. In that context, in this case the matters alleged in the notice are wider than just the residential use of the caravans. Those matters include the use of the land as a leisure plot and the formation of a vehicular access.
4. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters stated in the notice or in relation to the whole or any part of the land to which the notice relates. It follows from the wording of section 177(1) that, even if the appellant had no interest in pursuing planning permission for the residential use of the caravans, it was entirely open to him to pursue an appeal on ground (a) seeking planning permission for the use of the land as a leisure plot and/or the formation of a vehicular access.
5. For the above reasons, I consider that the enforcement notice is not a nullity and must stand. There are a number of defects with the notice which, in my view, require correction and/or variation. I shall return to these defects in the context of the appeal under ground (b).
6. The Norfolk Wildlife Trust has objected to the use of the appeal site for the purposes alleged in the enforcement notice on the grounds of impact on the biodiversity value of the land. However, in the absence of an appeal on ground (a), the planning merits of the use alleged in the notice do not fall to be considered.

### **The appeal on ground (b)**

7. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
8. In essence, the enforcement notice states two matters: (i) a material change of use of the land to a leisure plot, and (ii) operational development comprising the construction and formation of an access onto a classified road (the A1075 Wretham Road). It is convenient to consider these matters in turn, starting with the alleged material change in the use of the land.
9. The appellant raises two factual points in relation to the alleged material change in the use of the land. The first is that the appeal site did not previously comprise "woodland". I noted during my site visit that the appeal site adjoins an extensive area of the woodland to the west, and that some of the trees on

the western boundary of the appeal site are contiguous with that woodland. However, the photographic evidence shows that the majority of the appeal site did not comprise woodland immediately prior to the enforcement notice being issued, being more in the nature of long grass and shrubs with only isolated trees.

10. Nevertheless, I do not perceive that as being fatal to the enforcement notice. The breach of planning control is described in the notice as being a material change of use from "highway verge and woodland" (emphasis added). If not the latter, in my view the appeal site may still reasonably be described as the former. The word "woodland" may therefore be removed from the alleged breach of planning control without altering its scope or meaning: the words "highway verge" would suffice.
11. I am therefore satisfied that, in the above respect, the enforcement notice can be corrected and varied to delete reference to "woodland" without causing injustice to the appellant.
12. The second factual point raised by the appellant is that residential use of the caravans has not occurred. In that context, the appellant has provided a properly-made Statutory Declaration, in which he confirms that the caravans are not used for residential purposes but for the storage of tools, camping equipment and children's toys, etc. I have no reason not to accept this evidence as being accurate. Indeed, the appellant's Statutory Declaration is entirely consistent with my own observations at the site visit, when I noted that the larger of the caravans was being used exclusively for storage purposes<sup>3</sup>.
13. The Council refers to the presence of various items stored on the site as being evidence of residential use of the land. I do not agree. In my view, all of the various items being stored on the site were consistent with use of the land as a leisure plot. Furthermore, the appellant has provided a detailed description of his personal living arrangements, from which I am satisfied that he has a permanent residence elsewhere in Norfolk.
14. On the basis of all the above, I am satisfied that the residential use of the caravans has not occurred.
15. But again I do not perceive that as being fatal to the enforcement notice. The enforcement notice, as originally drafted, alleges the material change of use to land used as a leisure plot and for the stationing of caravans for residential use (emphasis added). The appellant does not dispute that the use of the land as a leisure plot has occurred. It appears to me that, in practice, the caravans are being used in connection with that use. I am therefore satisfied that I can correct the notice by simply deleting the words "and for the stationing of caravans for residential use", leaving the breach of planning control in relation to the material change of use only to that of a leisure plot. The requirements of the notice can be varied accordingly. Given that the appellant's own evidence is that the caravans are used for storage purposes in association with the use of the land as a leisure plot, I am satisfied that no injustice would be caused by correcting and varying the notice in these respects.

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<sup>3</sup> I did not look inside the touring caravan, which in any event was partially covered and evidently not in residential use.

16. In relation to the operational development, the appellant contends that the access into the appeal site was constructed over an existing access. In support of that position, the appellant has provided a photograph that purports to show a metal beam over the ditch that runs parallel with the highway and which, the appellant contends, was in place at the time he purchased the land. The appellant explains that the photograph shows that metal beam being covered by hard core.
17. Although this photograph clearly shows hard core being laid, I have no evidence to show that the metal beam was in situ prior to that. I have not, for example, been provided with any photographs of the metal beam in situ prior to the laying of the hardcore, or of the surface before the hard core was laid. Furthermore, the photograph appears to show the metal beam to be present on only one side of the access whereas, if the purpose of the metal beam was support a vehicular access, it would be reasonable to expect support to be required on both sides of the access. Even then, the metal beam is resting on the highest part of the ground, rather than being buried into it as might be expected if it was already in situ at the time. On the evidence available to me, I am therefore not persuaded that the photograph shows the alteration of a pre-existing vehicular access. On the contrary, it appears to me more likely than not that the photograph shows the laying of hard core as part of the creation of a new access.
18. The appellant has referred to correspondence with the Forestry Commission which confirms that the latter refused permission to create an access from its car park that adjoins the appeal site. To my mind, if anything that correspondence points towards the construction of a new access onto the A1075 Wretham Road as an alternative to an access from the Forestry Commission car park that was denied to the appellant. It therefore reinforces my view that the construction of the access did occur as alleged in the notice.
19. Further evidence that a new access has been created is provided by the Council in the form of aerial photographs taken in 2006, 2017 and 2018. The aerial photograph taken in 2006 clearly shows the land immediately adjoining the highway as being covered in vegetation with, other than the access to the Forestry Commission car park, no vehicular access across the highway verge. By contrast, the photographs taken in 2017 and 2018, and therefore shortly after the appellant purchased the land, clearly shows a vehicular access in the same position as it is now. Although I cannot completely discount the possibility that the access was added at some point between 2006 and 2017, the photographs are consistent with other evidence before me in indicating the access was created by the appellant in or around February 2017.
20. In this context, the enforcement notice variously described the access as an "access" or as an "access route". It is evident that the appellant has understood the meaning of the notice and what he must do to comply with it. Nevertheless, in the interests of clarity, I will vary the notice to delete reference to an "access route". I am satisfied that I can vary the notice in this respect without causing injustice.
21. The appeal on ground (b) succeeds to the above extent but, otherwise, the appellant has not discharged the burden of proof that is upon him. I am therefore satisfied that, on the balance of probability, the matters alleged in the notice have occurred.

### **The appeal on ground (c)**

22. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. This is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
23. The appellant's case under this ground of appeal is again in two parts: the use of the land and the creation of the access. Bearing in mind that I propose to correct the notice to omit any reference to "woodland" and to "for residential use", the breach of planning control to which this ground of appeal relates is:
- the material change of use of the Land from land used as highway verge to land used as a leisure plot and, without planning permission, a material operation on the Land being the construction and formation of an access to the A1075 Wretham Road.*
24. In relation to the use of the land, the appellant contends that "woodland" can be used for enjoyment without triggering a material change of use<sup>4</sup>. In support of that, the appellant points to the provisions within Class B, Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which, amongst other things, permits the use of any land for any purpose for not more than 28 days in total in any calendar year and the provision on the land of any moveable structure for the purposes of the permitted use<sup>5</sup>. The appellant considers that his use of land, which is primarily at weekends in the summer months but less frequently in the winter months, falls within the use permitted by the GPDO.
25. I have no reason to doubt the evidence of the use of the land contained within the appellant's Statutory Declaration. However, that does not necessarily mean that the appellant's use of the land accords with the provisions of Class B, Part 4, Schedule 2 of the GPDO<sup>6</sup>. The provisions within Class B relate to the temporary use of land and the provision on the land of any moveable structures associated with that temporary use.
26. I accept that the caravans could potentially be considered to constitute moveable structures, albeit it appears to me that they have not moved for a considerable period of time. The intention behind Class B is that any moveable structures associated with the temporary use are removed when that temporary use is not actively taking place so that the primary use of the land can resume. But that is clearly not what is happening here. In this case, whilst the appellant may be actively using the land for less than 28 days in any one calendar year, the 'moveable structures' associated with his temporary use are not removed at the end of each separate period of use and are in effect permanent structures. Moreover, many of the other structures that were present at the time of my site visit including, for example, the planting areas and the timber various sheds, are not moveable structures at all and are

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<sup>4</sup> The point is made notwithstanding the appellant's primary position that the land is not "woodland", but I have taken the point as applying the description of the land as highway verge.

<sup>5</sup> Amended by the insertion of Class BA by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 to provide an additional 28 days to that permitted by Class BA during the 'relevant period' only.

<sup>6</sup> Or, for that matter, the amended provisions within Class BA.

- permanent structures. It follows that the land cannot revert to its primary use at the end of each period of temporary use by the appellant.
27. I therefore consider that the appellant's use of the land as a leisure plot does not benefit from the provisions within Class B, Part 4, Schedule 2 of the GPDO<sup>7</sup>. It is, however, necessary for me to consider whether the use alleged in the notice does amount to a material change in the use of this land.
28. From the photographs of the appeal site before the use alleged in the notice commenced, it appears that the appeal site was largely covered with long grass and shrubs with only isolated trees. There were no built structures on the land. The use of that land was highway verge of which there was no active use by the Highway Authority. The character and appearance of the land was very much one of uncultivated countryside.
29. By contrast, the appellant's use of the land as a leisure plot results in activity on the site on a regular basis. Much of the long grass and shrubbery has been replaced with mowed grass. There are two structures on the land in the form of caravans, with several other timber structures used in connection with the leisure use. Fencing has been erected in various places<sup>8</sup>. In addition, various items are stored on the land in association with the leisure use. The combination of the activity on the land, the various structures on the land and the storage associated with the leisure use give the site an untidy appearance and a quasi-domestic character that is substantially different to that of the land before the use alleged in the enforcement notice took place.
30. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:
- ...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.*
31. In my view, as a matter of fact and degree, the appellant's use of the land as a leisure plot has resulted in a such a change in the definable character of the activities taking place on the land from what has gone on previously that it amounts to a material change of use.
32. The Council has referred me to the judgment of the Court of Appeal in *Pitman v Secretary of State for the Environment* [1989] J.P.L 831, in which it was held that the change of use from agriculture to a leisure plot constituted a material change of use. The facts of that case are not on all fours with those in this appeal, and are therefore not directly applicable to this case. However, the Court of Appeal found that a 'leisure plot' is a piece of land where leisure activities are carried on with some degree of frequency, and defined 'leisure activities' as those activities people carry on in their free time for the primary purpose of pleasure or amusement rather than the acquisition of money. The appellant's use of the land fully accords with that definition, and reinforces my conclusion that the appellant's use of the land as a leisure plot is substantially different in character that which went on previously, which involved no activity on the land.

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<sup>7</sup> Or, by extension, the amended provisions within Class BA.

<sup>8</sup> Whether that fencing constitutes permitted development under the GPDO is not before me in the context of this appeal and I make no comment on that.

33. In relation to the access, the appellant firstly argues that the access merely comprises the laying of stones and hardcore by hand, using a wheelbarrow and spades. The appellant maintains that no hardstanding or machinery was involved in the formulation of the access or access route. As such, the appellant contends that in this case the construction and formation of an access does not constitute operational development.
34. The appellant has not provided much evidence in support of that argument, and the Council has not provided any evidence of its own to contradict the appellant's version of events. I have therefore approached this matter by comparison of the photograph taken on or around 17 February 2017 provided by the appellant with the situation at the time of my site visit. It is evident from that comparison that there has been a significant regrading of the land, involving the infilling of the sizeable depression in the ground that is clearly visible in the appellant's photograph. Irrespective of whether that regrading was carried out by hand or by machinery, and given the amount of material that was involved, I conclude that as a matter of fact and degree this regrading constituted an engineering operation. Section 55(1) of the 1990 Act states that engineering operations constitute development, and section 57(1) of that Act confirms that planning permission is required for development.
35. In the alternative, the appellant contends that the creation of the access is permitted under the provisions of Class B, Part 2, Schedule 2 of the GPDO. This Class permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule. Two points arise in relation to the application of Class B to the appeal site.
36. Firstly, it only applies where the access is required in connection with development permitted by any other Class in Schedule 2 of the GPDO. I have already found that the use of the appeal site does not benefit from the provisions with Class B of Part 4 of this Schedule of the GPDO. It follows that the access is not permitted by Class B of Part 2 of the GPDO for that reason alone.
37. Secondly, the provisions of Class B of Part 2 of the GPDO only relate to the formation, laying out and construction of a means of access to a highway which is not a trunk road or a *classified road* (emphasis added). The road onto which the access opens is a classified road (the A1075 Wretham Road). It follows that the access alleged in the notice cannot benefit from the provisions within Class B of Part 2 of the GPDO in any event.
38. I conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

### **The appeal on ground (f)**

39. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to

its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary it) include to permanently cease the use of the Land as a leisure plot; to permanently cease the use of the Land for the stationing of caravans for leisure use; and to permanently close the new access. The purpose of the notice must therefore be to remedy the breach of planning control.

40. The appellant makes this ground of appeal only in respect of the requirement to permanently close the new access and remove the hardcore and surface materials from the access and remove the resulting debris from the Land. This on the basis that there has been no breach of planning control as planning permission is not required for the laying of stones on land by hand and the formation of an access at the appeal site constitutes permitted development. However, I have already found that the appellant's arguments in these respects are not well-founded and that planning permission is required for the access. Consequently, the appeal on ground (f) cannot succeed on these grounds<sup>9</sup>.
41. Although not a point raised by the appellant, given that I propose to correct the notice to delete reference to the stationing of caravans for residential use, it is necessary for me to comment on the requirement in the notice to permanently remove all caravans and associated leisure items and infrastructure from the land. In this context, it is settled case law that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate that material change of use, the notice may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied.
42. In this case, on the appellant's own admission, the caravans are part and parcel of the use of the land as a leisure plot. The caravans therefore facilitate that use. Consequently, even though I propose to delete any reference of the caravans from the breach of planning control that is alleged, the notice can still require the removal of the caravans in order to achieve the purpose of the notice. For that reason, I do not propose to vary the notice in that respect beyond deleting the reference to removing residential and domestic items from the land. I return to this matter in relation to the appeal on ground (g).
43. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me<sup>10</sup>. I have in particular considered whether the purpose of the notice would be achieved by simply closing off the access onto the A1075 Wretham without an attendant need to remove the hardcore and surface materials from which it is constructed. However, it is evident from photographs provided by the Council that no such boundary treatment was in place before the breach of planning control occurred. I therefore conclude that it is necessary to remove the hardcore and surface materials in order that vehicles cannot enter the site.
44. Accordingly, the appeal on ground (f) fails.

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<sup>9</sup> Had I found that planning permission was not required for the access, no breach of planning control would have occurred and the appellant's appeal on ground (f) would not fall to be considered.

<sup>10</sup> *Tapecrown Ltd v FSS & Anr* [2006] EWCA Civ 1744.

### **The appeal on ground (g)**

45. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is nine calendar months.
46. The appellant seeks an extension to the period of compliance in order to submit a retrospective planning application for the creation of an access and the siting of caravans for leisure use. I am also requested to take into the account the appeal handling process timetable, together with the impact of Coronavirus pandemic. A compliance period of twelve months is sought.
47. I am satisfied that the period of nine months specified in the notice would be sufficient time to carry out the requirements of the notice, including the removal of the caravans and all other items required to facilitate the use of the land as leisure plot. It would also be sufficient to carry out the works required to close the access and return the land to its previous condition.
48. In the event that a retrospective application is submitted to and accepted by the Council<sup>11</sup>, I accept that the determination of that application and any subsequent appeal may take some time. I am also mindful that the appellant would not wish to carry out potentially abortive work in carrying out any work prior to the outcome of the retrospective planning application or a subsequent planning appeal. This means that sufficient time must be allowed for the completion of the planning process before work commences on complying with the notice or any residual matters that might remain following a grant of any planning permission.
49. I am not persuaded that the Coronavirus pandemic will have a significant effect on this timescale, given the current situation in that regard. Nevertheless, taking all the above into account, I consider that the period of compliance of 12 months sought by the appellant would be a proportionate response to the breach of planning control that has taken place, given also the implications arising from the need to make corrections/variations to the notice. The appeal on ground (g) succeeds to that extent.

### **Conclusion**

50. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

### **Formal Decision**

51. It is directed that the enforcement notice is corrected by:
- In the first allegation at paragraph 3 of the notice, delete the words "and woodland"
  - In the first allegation at paragraph 3 of the notice, delete the words "and for the stationing of caravans for residential use"

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<sup>11</sup> Under the provisions of section 70C(1) of the 1990 Act, the Council can exercise its discretion to decline to determine an application for development that has previously been subject to an enforcement notice albeit, on my understanding, the provisions of section 70C(1) would not apply to the siting of caravans for leisure use, that now forming no part of the matters stated in the enforcement notice.

52. It is directed that the enforcement notice is varied by:

- In the second requirement at paragraph 5 of the notice, delete the words "residential and"
- In the third requirement at paragraph 5 of the notice, delete the words "residential, domestic"
- In the fourth requirement at paragraph 5 of the notice, delete the word "route"
- In the fifth requirement at paragraph 5 of the notice, delete the words "woodland area" and substitute there the word "Land"

53. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

*Paul Freer*  
INSPECTOR