



Appeal Decision

Hearing Held on 6 July 2021

Site visit made on 14 July 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/D1265/X/21/3267147

Land at Clyffe Copse, Road to Clyffe House, Tincleton, Dorset DT2 8QR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Pauline Bennetts, Tincleton Trees against the decision of Dorset Council.
 - The application Ref WD/D/18/002445, dated 23 October 2018, was refused by notice dated 17 December 2020.
 - The application was made under section 192(1)(a) and (b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use and development for which an LDC is sought is gravel hardstanding 6m x 6.5m; wooden movable welfare facility 6.1m x 5m x 4.6m for seasonal forestry workers as permitted by 1960 Caravan Act.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development is taken from the appeal form and reflects the appellant's view that the proposed welfare facility would be a caravan, a position reaffirmed in the hearing. The Council disputes this and contends the welfare facility would be a building. For descriptive purposes, I shall refer to 'the welfare facility' or 'the structure' in this decision.
3. Comments made by local people and the Parish Council raise issues of planning merit, including the need for the development, its effect on heritage, pollution, access, the adequacy of services, noise, and working hours. Such issues may be considered in deciding whether to grant planning permission. However, neither they, nor the benefits of the appellant's forestry work, including the removal of invasive rhododendron, are relevant in determining lawfulness.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.
5. If, on an application under section 192 of the Act, the local planning authority is provided with information satisfying it that the use described in the application would be lawful if instituted at the time of the application it shall

issue a certificate to that effect; and in any other case shall refuse the application. Similarly, if the local planning authority is provided with information satisfying it that the operational development described in the application would be lawful if begun on the date of the application it shall issue a certificate to that effect; and in any other case shall refuse the application.

Reasons

6. The hardstanding and welfare facility would be located within 12 hectares (ha) of woodland. Within that area is a commercial Christmas tree plantation, agreed by the parties to be an agricultural activity. The entire 12ha is managed by the appellant and there is no physical separation between the plantation and the rest of the land. Nor is there evidence that tools, plant and machinery used on the plantation are different from those used on the rest of the land or that the plantation is worked by people who are not also engaged in forestry on the land. Accordingly, and while Christmas tree sales may help fund woodland management, the character of the woodland is a single planning unit in a mixed use of forestry and agriculture, with neither incidental to the other.
7. Under section 191(2) of the Act uses and operations are lawful at any time if:
 - (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of an enforcement notice then in force.

The hardstanding

8. It is not disputed that the proposed hardstanding constitutes operational development. However, the appellant contends it is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Class B of Part 6 of Schedule 2 of the Order (Class B) permits the provision of a hard surface on agricultural land comprised in an agricultural unit of not less than 0.4ha but less than 5ha. The plantation is less than 5ha, but the appellant and the Council disagree whether it is, or exceeds, 0.4ha. Neither view is supported by evidence of direct measurement, taken on the ground, of the area currently managed as a plantation.
9. The right to develop conferred by Class B applies to agricultural land comprised in an agricultural unit, whereas the planning unit is in mixed agricultural and forestry use. Even if the plantation were an agricultural unit of not less than 0.4ha, the hardstanding would not be sited on it, as the wording of Class B requires, but on nearby land in forestry use. Furthermore, while the appellant indicates the hardstanding would accommodate a quad bike and a flail machine, evidence that they, or the hardstanding, would be used in connection with the plantation alone has not been provided.
10. Accordingly, it has not been demonstrated that the formation of the hardstanding, if begun when the application was made, would have been on agricultural land in an agricultural unit of not less than 0.4ha but less than 5ha, and thus permitted by Class B. No other means by which the Order would have permitted the formation of the hardstanding has been identified. Consequently,

it would have been development requiring planning permission, and thus not immune from enforcement action, if commenced at the time of the application.

The welfare facility

11. The structure would be formed by building a traditional pitched roof over a single-storey base unit. If, as the appellant contends, this structure would be a caravan, its stationing on the land would not result in a material change of use provided it is only used for purposes incidental to the lawful use of the land. The evidence confirms that the use of the welfare facility would be incidental to the mixed use of forestry and agriculture taking place on the land. Accordingly, the stationing of a caravan for those purposes would not have instituted a material change of use at the time of the application.
12. Alternatively, Class A of Part 5 of Schedule 1 to the Order (Class A) grants planning permission for use of land as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (the 1960 Act). Paragraphs 7 and 8 of the latter, concerning the provision of accommodation for agricultural and forestry workers, have been cited. However, in each case the permission is limited to "during a particular season". Class A would therefore not grant planning permission for year-round stationing, which is clearly intended, notwithstanding the reference to seasonal workers in the description.
13. Case law has identified 3 primary factors in assessing whether a structure amounts to a building. These are size, permanency and the degree of physical attachment¹. No one factor is decisive, and any assessment will be a matter of fact and degree in the given circumstances.
14. The Council contends the structure would not be a caravan because the distance from the floor of the base unit to the inside of the apex of the roof would exceed the height of a twin-unit caravan, as defined by the Caravan Sites Act 1968. The definition of a twin-unit caravan includes that it must be "composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices". The appellant's evidence shows that the roof section would be constructed in situ and in a traditional manner. The roof would thus not be a section separately constructed and the act of building it on the base unit would not be the assembly of not more than two sections. The structure would therefore not be a twin-unit caravan.
15. The 1960 Act defines a caravan more broadly as being designed or adapted for human habitation and capable of being moved from one place to another. There is no size limit within this definition.
16. While the base unit is now on the ground, it was on a trailer at the time of the application and the appellant has provided photographs showing this. The act of removal from the trailer and placing on the ground has demonstrated that the base unit is mobile, and thus has limited permanence and physical attachment. However, it is questionable whether the structure can reasonably be said to be designed or adapted for human habitation until the roof is added.
17. The roof section would overhang the base unit on one side, giving the structure an unusual form and appearance for a caravan. However, the definition in the

¹ Measor v SSETR & Tunbridge Wells DC [1999] JPL 182

1960 Act is not concerned with appearance and the overall size of the welfare unit would be consistent with the fundamental characteristics of a caravan.

18. The appellant has produced evidence that the entire structure would be mobile, including a quotation to move it, with the roof on, provided by a crane hire company. Although the quotation does not state how this would be achieved, it was explained in the hearing that the structure would be lifted by placing a metal frame underneath and attaching lifting straps to the frame, thus keeping them clear of the overhanging roof. While the practicality of moving the structure by crane through woodland may be questioned, the relevant test is about the mobility of the structure itself, not the constraints of the site. In this regard, no evidence that the addition of the roof would increase permanence or physical attachment has been produced.
19. On the evidence before me, I am satisfied that the welfare facility would be capable of being moved. As a matter of fact and degree, its size, permanency, and degree of physical attachment are such that it would meet the definition of a caravan in the 1960 Act.
20. However, the base unit was part of a structure the subject of an enforcement notice issued in April 2016² and still in force. The breach of planning control alleged in the notice was the erection of a building in an approximate position marked on the accompanying plan. While I am satisfied the base unit is not in that position, the requirements of the notice were to permanently remove the structure from the land, or to demolish it and permanently remove the resulting materials and debris from the land. The plan accompanying the notice confirms that the land to which it relates is the 12ha woodland. It is therefore inescapable that the base unit is part of a structure that the notice requires to be permanently removed from the land, either intact or following demolition. It is equally inescapable that it has not been permanently removed from the land.
21. While I am satisfied the structure would be a caravan and would be used for purposes incidental to the lawful use of the land, that does not alter the reality of the notice and it has not been demonstrated that the welfare facility would not contravene a requirement of an enforcement notice in force. This did not affect the appellant's right to apply for an LDC or to appeal the Council's decision, but it is a significant constraint on whether an LDC may be granted. By reason of section 191(2)(b) of the Act, set out above, the siting of the proposed welfare facility would not have been immune from enforcement action, and so would not have been lawful, if instituted at the time of the application.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC for a gravel hardstanding and wooden movable welfare facility for seasonal forestry workers as permitted by the 1960 Act was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR

² Reference 16-0099, issued 7 April 2016

APPEARANCES

FOR THE APPELLANT:

Pauline Bennetts
Tom Bennetts

FOR THE LOCAL PLANNING AUTHORITY:

Ian Cousins	Senior Planning Officer, Dorset Council
Charlotte Loveridge	Enforcement Officer, Dorset Council

INTERESTED PERSONS:

Councillor Charles Cooper	Kingsland Parish Council
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