



Appeal Decision

Site Visit made on 18 August 2021

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 27th August 2021

Appeal Ref: APP/D1265/C/20/3263783

Plot 6, Redbridge, Uddens Drive, Wimborne, BH21 7BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Daniel Howard against an enforcement notice issued by Dorset Council.
 - The notice, reference ENF/17/0152, was issued on 2 November 2020.
 - The breach of planning control as alleged in the notice is a material change of use from agricultural land to a mixed use to agricultural and recreational activities comprising the erection of buildings and structures, formation of hardstanding and culverted ditch.
 - The requirements of the notice are 1. Cease to use the land for recreational purposes and storage 2. Cease to erect buildings on the land. 3. Cease to place structures on the land. 4. Dismantle and remove the stable building. 5. Dismantle and remove the open storage building. 6. Dismantle and remove the shipping container and staircase/platform. 7. Dismantle and remove the timber hen house. 8. Remove the touring caravan from the land. 9. Remove the imported materials brought to the land to form hardstanding in the area shown hatched green on the plan. 10. Remove the culvert pipe and its materials. 11. Make good the ditch embankments by sowing seed and allow the ground to recover.
 - The periods for compliance with the requirements are: for requirements 1-8: 1 month; for requirements 9-12: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by deleting "*material change of use from agricultural land to a mixed use to agricultural and recreational activities comprising*" from the allegation and varied by deleting requirements 1 "*cease to use the land for recreational purposes and storage*", 2 "*cease to erect buildings on the land*", 3 "*cease to place structures on the land*" and 8 "*remove the touring caravan from the land*".
2. Subject to this correction and variation, the appeal is allowed in part on ground (a) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for open storage building, hardstanding and culverted ditch at plot 6, Redbridge, Uddens Drive, Wimborne, BH21 7BJ.
3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused in respect of the stable building and shipping container, platform and staircase at plot 6, Redbridge, Uddens Drive, Wimborne, BH21 7BJ on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background to the Appeal

4. The various plots of land once formed part of a larger holding that sits to the east of Redbridge and through which flows Uddens Water, a small stream. The road ends at Redbridge and turns into a track and bridleway heading north, but there are no roads or rights of way on or particularly near the land which is isolated and quiet. It consists mainly of a large clearing of pasture surrounded by thick woodland. One of the plots is entirely woodland, several are open pasture and others, including the appeal site, consist of a mix of woodland and pasture.
5. The Council were first alerted to various activities on the wider area of land back in 2017 and have issued a number of enforcement notices of which this is one. The lawful use of the land is agriculture and forestry and the notice alleges a material change of use to a mix of the lawful uses and recreational.

The Notice

6. The allegation says the material change of use 'comprises' the erection of buildings and structures a hardstanding and ditch. This suggests it is the buildings and structures that solely form the material change of use. In fact they comprise part of the material change of use and indeed the erection of building is not a use but operations. To make this clear I can correct the notice to replace "comprising" with "including". There will be no injustice to either party in doing so as it does not change their arguments, but I have a duty to make the notice accurate.

The Appeal on Ground (e)

7. I'm not sure why this ground has been appealed. Even if the notice was not sent to the correct address it still found its way to the appellant who has lodged this appeal. Its difficult to see therefore how he has been prejudiced. The appeal on ground (e) fails.

The Appeal on Grounds (b) and (c)

8. It makes sense to deal with these grounds together as the allegation involves a number of separate issues. Clearly a number of buildings and structures were at one time on site. These comprise a stable, and open fronted store, a shipping container, a touring caravan and a hen house, so this part of the allegation is correct as far as ground (b) is concerned. Of these the appellant accepts the open fronted store and the stable are buildings as well as the container, as it has obtained a degree of permanence. I would not disagree. The hen house and touring caravan are part of the uses of the land. The hen house has been removed so I need consider only the touring caravan.
9. The material change of use alleged is from agriculture to a mixed use, the offending element being recreational. The problem with this is determining exactly what use is being made of the land. The appellant argues there is no recreational use it is merely maintenance of the wood and pasture. The Council argue there is no agriculture or forestry going on so it must be recreational.
10. The first point to bear in mind is that the lawful use of the land persists until there is a material change to another use. The fact that no agriculture is going on doesn't mean there has been a change of use. Although it's not quite clear

it seems the appellant is saying that what he is doing is just maintaining the woodland and pasture, which isn't a material change of use, along with some de minimis birdwatching and relaxation.

11. Most of the actual evidence is contained in photographs provided by the Council and the appellant. In 2017 it is clear a trackway has been laid allowing access beyond plot 1 to plot 6. A stable is being erected in the paddock, a hardstanding has been laid in the wood, opposite the entrance to the paddock and a store is being built in the clearing. By May 2018 the access is fenced and gated and the stable and store are completed and painted green. The touring caravan is in place tucked in a corner behind the stable. The shipping container is in place in the wood, opposite the store, and has steps leading up to a viewing platform on the roof. In the store is a 4 wheel drive vehicle and some storage of wooden objects, ladders, panel fencing, timber, a broom and rake, buckets and a watering can etc. The ditch that runs alongside the wood, separating it from the paddock has been culverted to allow access to the wood through a gate that links the hardstanding area in front of the store and container with the paddock and access track.
12. The appellant's photographs from the same time show in addition, a pile of planings and some ground works between the stable and the caravan. By January 2020, activity is much reduced and the hardstanding is becoming overgrown. The groundworks have amounted to nothing, but there is a henhouse in the paddock. The store doesn't have a vehicle in it, but otherwise seems to contain similar items, certainly no more than before. The notice was issued in November 2020 and when I carried out my site visit the hen house and stables had gone, the paddock was maintained as rough grass. The wood was becoming overgrown and the store contained similar fence panels and timber and tools as before, as well as a sit on mower and small tractor/digger.
13. From this it is difficult to understand what actually has been going on. The Council note no horses were kept or it seems were ever intended to be kept. The appellant says the stables could be used as a breeding pen, so a temporary planning permission should be granted to allow the use to evolve. So it is clear that if a use was planned for the stables (and if not why build them), it never seems to have commenced. The Council also note the groundworks are 'unexplained', but they were never completed and have now gone. The keeping of chickens may have been a hobby/recreational use, but it is unclear whether any were actually kept on the land. The Council say the open fronted store contained personal items, but there is no evidence of anything other than the usual stuff someone would bring onto the land for a myriad of purposes, including maintenance. This leaves the container, which has clearly been used as an observation post, presumably for birdwatching. I saw it was full of logs on my site visit, but no other storage use is suggested.
14. It is hard to conclude from any of this that there has been a material change of use. Something was obviously intended, hence all the building work, but it does not seem to have ever commenced. The bird watching is de minimis and while the appellant might be maintaining the land because he enjoys doing so, that does not amount to a recreational use. It would seem to me therefore the ground (b) appeal is successful against the alleged material change of use.
15. The structures and buildings need to be considered on ground (c). The touring caravan, according to the appellant, was used for tea breaks. It is very small

and its size is commensurate with that use for one or two people maintaining the pasture and woodland. Consequently it is part and parcel of the lawful agricultural use and does not require a separate planning permission. The timber hen house has gone which would seem to be acceptance that it was not there for agricultural reasons.

16. The stable has also gone and there is no evidence what it was intended to be used for. The keeping of horses would not be agricultural and that would be the obvious use for a stable. There is no link to the lawful use of the land so if it was considered to be a moveable structure and not a building it would not benefit from ground (c). But even if there was a link, as a building it would require planning permission and there is no suggestion it benefits from any permitted development rights. The open fronted store and the container are quite definitely buildings and so require planning permission.
17. On these grounds therefore I find there has been no material change of use and to that extent the appeal on ground (b) succeeds. The touring caravan is part of that use and so does not require planning permission. The appeal on ground (c) succeeds for the caravan.

The Appeal on Ground (a)

18. It has always been the appellant's contention that the use was agriculture and forestry and the ground (a) was only for the buildings (store, shipping container and stable) and the hardstanding and culvert. Given my conclusions on ground (b) I agree these are the only issues.
19. The site lies in the green belt and the reasons for issuing the notice and the Council's statement make it clear that harm to the green belt is the only issue. Although the stable has gone, I assume it was in place at the time the notice was issued and so need to consider it. Paragraph 149 of the NPPF states that new buildings are inappropriate development unless they fall within one of the exceptions listed. There is no suggestion it is required for agriculture or forestry so it does not benefit from exemption (a). the only other possibility is (b) which is an appropriate facility for outdoor recreation. Given the use of the building is unknown it is not possible to say it is an appropriate facility, but in any event, it was a large structure that stood in the open paddock and clearly did not preserve openness. A temporary permission to see what might develop is clearly not appropriate for a building that is harmful to the green belt.
20. The container may currently be used for storing logs but given there is a large open fronted store it is hardly necessary. There is no evidence it was used for any storage purposes in the past, and its primary purpose seems to be as a viewing platform. As such its use might be considered to be outdoor recreation, but it is hardly an appropriate facility and does not preserve openness.
21. The store would seem to have had an agricultural use. I am not convinced the storage was principally for domestic items, although there may have been some stored there from time to time, its principal use was and is vehicles and tools and the usual items associated with rural maintenance. It is thus not inappropriate development by virtue of paragraph 149(a). It does not seem excessively large, it is a simple, open fronted structure and has weathered to fit in with its woodland setting. It would therefore not seem to harm the character of the area and should be granted planning permission.

22. The ditch has been culverted, but only for a short stretch and no actual harm has been identified. In terms of the green belt it is an engineering operation and it does preserve openness so is not inappropriate development. The hardstanding has become largely overgrown, but in any event is also an engineering operation. On its own it preserves openness, and I have no evidence or any suggestion that it might be used to further some other activity, such as outdoor storage or car parking, that might itself harm the green belt. Therefore it also benefits from paragraph 150(b).

Conclusion

23. In order to allow part of the appeal on ground (b) the simplest way is to delete the reference to the material change of use from the notice and then issue a split decision on ground (a) to allow the store, culvert and ditch. I shall delete the requirements relating to the use and touring caravan but those that remain concerning the store, ditch and culvert will be overridden by the grant of planning permission. From what I saw on site this will involve the appellant in removing the container, but otherwise no further action is required. I shall also delete requirements 2 and 3 as they are unnecessary and excessive as there cannot be a blanket ban on all structures or buildings. There is no need to make the correction to the notice noted in the 'notice' section above as that phrase is being deleted from the allegation.

Simon Hand

INSPECTOR