



Appeal Decisions

Inquiry (Virtual) Held on 17 August 2021

Site Visit made on 18 August

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 27th August 2021

Appeal A Ref: APP/D1265/C/20/3263665

Land known as Plot 1, Redbridge, Uddens Drive, Wimborne, BH21 7BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mike 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 without planning permission, the material change of use of agricultural land to a mixed use of land for agriculture and recreational gardening activities comprising the siting of a container (refrigerated lorry back) used as a building for storage.
 - The requirements of the notice are: (1) Cease to use the land for recreational purposes and as a garden. (2) Remove the former refrigerated unit used as a storage building from the land.
 - The period for compliance with the requirements is: 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) 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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Appeal B Ref: APP/D1265/C/20/3263666

Land known as Plot 1, Wimborne, BH21 7BH

- This appeal is made by Mrs Howard and is identical to Appeal a except there is no ground (a)
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Appeal C Ref: APP/D1265/W/20/3263667

Land known as Plot 1, Wimborne, BH21 7BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Mike Howard against Dorset Council.
 - The application Ref 3/20/0874/FUL, is dated 1 June 2020.
 - The development proposed is cChange of use of land to outdoor recreation (including allotment land) and erection of a storage building.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by: deleting from the allegation the word "comprising" and replacing it with "including". Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

Appeal C

2. The appeal is dismissed and planning permission for change of use of land to outdoor recreation (including allotment land) and erection of a storage building is refused.

The Notice

3. It was agreed the allegation needs to be corrected by deleting “comprising” and replacing it with “including”.

Background to the Appeals

4. The various plots of land once formed part of a larger holding that sits to 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 consists entirely of woodland, and two others, including the appeal site are mixed woodland and open pasture.
5. The wider area of land was purchased in 2006 by Mr Richard Isaacs. At some point he laid a hardstanding and erected a small shed and moved a small shipping container onto the land. He also attempted to get planning permission for a poultry business on the land but was refused. Eventually, in 2017 he split the land into 7 plots and sold them off individually. Plot 1, which is the subject of this appeal, was purchased by the appellant and contains the hardstanding, shed and container. From a point close to the end of the road a track leads off through woodland past plot 7 and to an open area that provides access to the wider paddock and plots 1, 2, 6 and 7. A track runs between plots 2 and 6 to provide access to the rest of the paddock land.
6. Plot 1 thus consists of a relatively thin strip of woodland bounded to the south by the stream and to the north by the access track, with a larger open paddock beyond. Between the two, clustered round the entrance, is the hardstanding, shed, container and a small wooden toilet building that is not part of the notice and which the Council have no objection to.
7. In 2018 Mr Howard applied for an LDC to regularise the position of the container, shed and hardstanding. The Council issued a split decision¹ allowing the hardstanding and shed, as they were buildings or operations and so had been in place for more than 4 years, but refusing the container, which was a moveable structure and so was use of the land and had not been in place for 10 years. This was appealed² and the appeal refused as the Inspector was not convinced the container had been in place for 10 years.
8. When the Council visited the land in 2018 it seemed clear to them it had been split up into plots and was being used for a variety of purposes. Its not clear what use Mr Isaacs made of the land as a whole, but it doesn't seem to have amounted to very much. Inevitably splitting up the land into 7 smaller plots has introduced a much greater intensity of use. Seven owners, even if they do nothing more than maintain the land, will lead to more fences, gates, storage buildings and possibly stables, and the associated agricultural paraphernalia.

¹ 3/18/1859/CLE date of application 9 July 2018

² APP/U1240/X/19/3232214 issued 5 August 2020

Even with very low key uses, the appearance of the land will have changed, possibly quite significantly, from virtually unused woods and paddock. The Council were clearly concerned some of the uses at least went beyond agriculture and issued a series of enforcement notices, of which this is one.

The Appeals A and B on Ground (c)

9. This ground is that the material change of use as alleged has not happened. The Council allege that Mr Howard is using the land for a mix of uses, agricultural and recreational gardening. At the inquiry they suggested the mix should actually be expanded to include general recreation and woodland management. Mr Howard says everything he is doing is either agricultural or de minimis.
10. When I visited the site the paddock was fenced off from the hardstanding and woodland by a post and rail fence with an electric wire inside as 3 sheep were grazing it. The woodland had a path cleared through it, edged with fallen branches and a number of bird and bat boxes had been put up. The hardstanding was largely overgrown, but tucked under the trees were the container, toilet and shed. The shed contained a small tractor, (that had once been a sit-on mower) a trailer and various implements. The container was used for storage of rolls of wire fencing, stakes, tools and some shelves with water bottles and various other small items. On the corner of the hardstanding was Mr Howard's 'allotment' which consisted of a number of small raised-beds and a few large pots with vegetables growing. There was a bench, watering can and various buckets and piles of logs lying around. In other words it was very much as Mr Howard described.
11. However, the issue is what the site was being used for in November 2020, when the notice was issued. Historically the Council's photographs show a rather different picture. Photographs from June 2017 show little difference from now, except the paddock has shorter, neater grass. In May 2018 there is little difference in the outdoor storage. Although there may be some more pots in the 'allotment'. The main difference is the paddock, which has been neatly mown, with the appearance of stripes, apart from the top corner which is fenced off as a wildflower meadow. Later in May 2018 are photographs of the storage inside the container and shed. These show a rather more domestic scene inside the container, with a small chest of draws, a screen with a towel over it, a shelf behind with what look like small personal items on and several kitchen style storage units with cutlery, bin bags, and possibly some cheese and bottle of beer, as well as more general items, wellingtons, paint cans etc. In the shed is the tractor and some tools and gardening chemicals. A pile of logs and wheelbarrow are outside and there is a picnic bench and a garden gnome (or possibly small scarecrow, the exact description was disputed at the inquiry). By September 2020 the picnic bench and gnome/scarecrow had gone and outside storage was more as I saw it. There are no interior photographs from this date. The notice was issued two months later.
12. More photographs were provided by Mr Brightman, who gave evidence, but he could not date them to closer than 2018-19. These are exterior photographs only and show very much what the 2018 photos showed, general outdoor storage, some gardening in pots and raised-beds, a bench and a picnic bench. The paddock is mown but not noticeably neatly.

13. Mr Howard explained at the Inquiry what he thought was going on. He accepted he and his wife were using it for leisure purposes, in that they maintained the wood, mowed the paddock, grew some veg and sat about enjoying the peace and quiet. More recently, he had got some sheep in to graze the paddock as the Council clearly had a problem with him mowing it. They used to have a real allotment, but it was sold off for housing, hence they decided to grow some veg on the site. Trees have been planted in the wood, which is possibly ancient woodland, and so can only be maintained and not used for forestry purposes. The stream is kept clear of fallen trees and branches, and wildlife is encouraged with log piles, bird and bat boxes.
14. In my view this is all rather inconclusive. However, the Council pointed out that the appellant had made a planning application for recreational use of the land and an associated stable-like building for storage purposes. That application was not determined but is subject to the s78 appeal above. In that application in the form and the covering letter the existing use of the land is described as outdoor recreation, informal growing of native tree species, vegetables and fruit in the form of an allotment and relaxation, birdwatching and enjoying the peace and quiet. It is clear from this there had been a material change of use and a fully-fledged recreational use was in place. The application was made in May 2020.
15. Mr Munnings, the appellant's agent, explained he had made this application and it followed several years of wrangling with the Council. Mr Howard was informed that grazing sheep was akin to keeping pets and mowing the paddock was creating a lawn. His neighbours on one of the other plots kept alpacas and that too was questioned by the Council. It was clear the Council did not believe anything Mr Howard was doing was agricultural. There was therefore no point in claiming a current agricultural use and the application was designed to describe what the Council thought was going on in order to regularise it. I'm not sure this was the most sensible approach, but I can see that it made sense at the time. But in any event, it's not really what Mr Howard thought he was doing, but what he was actually doing that counts.

Conclusions on ground (c)

16. In my view the small scale growing of fruit and veg at the site does not amount to an allotment use. It is clearly more akin to a small garden and so is recreational. The maintenance of the woodland may be carried out for pleasure, but that doesn't mean it does not fall within the ambit of forestry. It's difficult to see how maintaining woodland couldn't be a forestry activity. Grazing sheep on the paddock is also clearly agricultural. I'm not convinced by the argument that the sheep are only there to service the grass and not the other way around. I'm not sure that sheep have a purpose, they are simply sheep, they eat grass. I'm reluctant to go any further into the motivation for keeping sheep than that. Mowing the paddock to create a lawn is somewhat different. But I do not think that is what has happened. The paddock has always been fenced off from the hardstanding. Before the sheep the paddock needed to be mown to prevent it from simply becoming overgrown. Sitting on a bench and relaxing is not a use at all, neither is birdwatching, nor looking at a field, with or without sheep on it.
17. Having said that I can understand the Council's anxiety. Splitting up the land into plots is an open door for recreational uses to develop. In 2018 when they

visited the site the freshly mown paddock did look like a lawn, the container did seem to have more domestic than agricultural storage, there was a picnic bench and a small vegetable plot. Other uses were also going on around the site that also seemed to be non-agricultural. Reading between the lines of Mr Howard's declaration and evidence I would suggest he also was intending to carry out a rather more domesticated use of the site than he is now. I can readily believe he thought this perfectly acceptable, the line to be drawn between recreational and agricultural uses is difficult enough for those of us whose job it is to know, never mind the general public. However, it seems to me that by 2020, the planning application notwithstanding, Mr Howard had listened to what the Council had said and reduced the potentially recreational uses. Although it is difficult to be certain on dates, it seems to me that on the balance of probability by November 2020 the primary use of the site was agricultural with some de minimis vegetable growing. There had not therefore been a material change of use as alleged, either in the notice or in the suggested revision.

18. Given this, the position of the container becomes more straightforward. Is its use ancillary to the agricultural use? It clearly wasn't in 2018, as the photographs show, but it clearly was at the time of my site visit. Given my conclusions above on timing I have no reason to assume it wasn't also in ancillary use in 2020. A secondary consideration is its size. There is no test that an ancillary structure has to be 'reasonably necessary', but it does have to be genuinely ancillary, which is similar. In other words one can't simply place a dozen shipping containers on the land, store tools in each one and claim they are ancillary to a plot of only half a hectare. But in this case the container is quite modest in size. The lawful shed is also pretty small and although the plot is small, it still requires a certain amount of equipment to manage the woodland and the paddock, the fences and gates etc. It could be three times as big but not need any more storage, one would still need one small tractor, one trailer, one wheelbarrow etc regardless of the size. In other words there is a certain minimum amount of storage one needs once a plot of land is larger than a small garden. I do not think the storage on site exceeds that and so the use of the container is genuinely ancillary.
19. The Council argued Mr Howard only lived 10 minutes' drive away where he kept a trailer and already brought a sit-on mower to the site. There was no reason why he couldn't just bring what tools he needed every day and so had no need for storage at the site. I am not convinced by this argument. For something to be ancillary there is no need to show that every alternative has been considered and found to be impossible. It merely needs to be shown the building is genuinely ancillary.
20. On the basis of the above conclusions the appeal on ground (c) succeeds. There has been no material change of use and the shipping container can remain as a lawful ancillary use. I shall quash the notice. There is no need to consider grounds (a), (d), (f) and (g).

Appeal C – The Planning Appeal

21. This appeal is for a change of use to outdoor recreation, including an allotment and a storage building. The actual uses the appellant seeks to gain permission for are mostly those considered above and so are not recreational. I shall

assume therefore, the recreational use sought is more akin to that the Council feared was taking place originally.

22. The site lies in the green belt and both the Council and appellant relied primarily on the policies in the NPPF as part of their green belt consideration and HE3 of the Christchurch and East Dorset Core Strategy 2014 that development should protect and seek to enhance the landscape character of the area.
23. The appeal falls into two parts, the use of the land and the erection of a storage building. I shall deal with the latter first. Green belt policy is quite clear that the erection of a new building is inappropriate development unless it falls within one of the exceptions in paragraph 149 of the NPPF. Exceptions (b) and (d) are the relevant ones. Dealing with (d) first it is proposed the new building would replace the shipping container and shed, it would therefore be a replacement building. However, it also needs to be "not materially larger" than those it replaces. The shed has a footprint of 2.6m x 2.3m and the container is 4m x 2.2m. Combined that is a footprint of 14.78sqm. The proposed storage building would be 8.3m x 3.15, or 26.15sqm. That is 77% larger than the buildings it replaces, which is quite definitely materially larger. The proposed storage building does not therefore fulfil the criteria of exception (d).
24. Exception (b) is the provision of appropriate facilities for outdoor recreation. The storage building would certainly be a facility for outdoor recreation, but the Council queried whether it would be appropriate. However it also needs to preserve the openness of the green belt. This is slightly tricky as obviously any building would not preserve the openness of the green belt so this sentence must be linked to the concept of being an appropriate facility. In other words something that was both modest and genuinely necessary would fulfil the expectations of (b). The proposed building is neither.
25. It is designed to look like a pair of stables, though no horses are proposed. The reasoning was that stables would not look out of place in the countryside and it could then be re-used if future owners wanted to keep a horse on the paddock. I agree that both these are sensible considerations, but they do result in an unnecessarily large building. I've found above the small shed and container provide sufficient storage for the modest needs of this small plot. No explanation of why a much larger storage unit is required has been provided. Even a genuine recreational use would not need more storage than is already there unless that use became quite radically different from what was proposed. Consequently I do not consider this is an "appropriate facility" and so it does not preserve openness.
26. As neither exception is relevant, the storage building is inappropriate development and should only be allowed if there are very special circumstances. The appellant suggests the new storage building would replace the existing store and container and would look much better. I am not convinced it necessarily would look better. Both the existing structures are small and blend into the woodland edge, whereas the new store would be large and conspicuous. It certainly is not such an improvement as to amount to a very special circumstance.
27. The use of the land for recreational purposes falls under paragraph 150, where a material change to such a use is not inappropriate development as long as it preserves the openness of the green belt and does not conflict with the

purpose of including land within it. The Council said they were happy the low key use at the moment was not inappropriate development, but I have already concluded that it is not a recreational use. A genuine recreational use, such as making a garden of the paddock and hardstanding would not harm openness but it could conflict with the purpose of safeguarding the countryside from encroachment. The domestication of the plot would inevitably mean it did not appear to be countryside any more, and that a garden or similar use more associated with urban areas had encroached. Consequently, I have considerable sympathy with the Council's view that such a use would conflict with paragraph 150.

28. Two issues reinforce this view. Firstly, once granted planning permission, the use would become recreational. There is no way of preventing further intensification of the recreational use so that encroachment became more obvious and indeed openness was harmed. Conditions were discussed, but no sensible ones were suggested that could limit the use. The fear of future intensification is a genuine planning concern. Secondly, the change of use is linked to the new storage building, and the two would seem to stand or fall together. As that building is clearly inappropriate development then the use as a whole would be.
29. Policy HE3 seeks to protect and enhance the countryside. Even if the enhancement element is considered to be excessive, the NPPF at 174 says that policies should recognise the intrinsic character and beauty of the countryside. This part of Dorset is particularly attractive, comprising blocks of pasture and woodland that are quiet and have the feel of remoteness despite being only a few kilometres from the A31 and the built up area of the greater Bournemouth conurbation. A recreational use of the land, of anything more than something that would be on the edge of not being a material change of use at all would be bound to introduce paraphernalia and other elements that would stand out as intrusive and out of place in the countryside and would not be in accord with HE3 or the NPPF.
30. Drawing this altogether there is direct harm to the openness of the green belt caused by the proposed storage building, and by an unconstrained recreational use so that the proposal as a whole is inappropriate development with no very special circumstances and should be refused. Even if the recreational use on its own could be said to be not inappropriate development and so the green belt is set aside, it would still be contrary to HE3 and section 15 of the NPPF. The planning appeal is therefore dismissed.

Overall Conclusions

31. I shall correct the allegation then quash the enforcement notice but dismiss the s78 planning appeal.

Simon Hand

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/D1265/C/20/3263665	Mr Mike Howard
Appeal B	APP/D1265/C/20/3263666	Mrs M Howard
Appeal C	APP/D1265/W/20/3263667	Mr Mike Howard

APPEARANCES

FOR THE APPELLANT:

Gavin Collett – Barrister

He called

Martin Howard – appellant

Simon Munnings BSc(Hons) MRICS FAAV - consultant

FOR THE LOCAL PLANNING AUTHORITY:

Michael Brett – Barrister

He called

James Brightman BA (Hons) Dip TP MRTPI – Planning Officer

DOCUMENTS

1. Letter from Sophie Martin
2. Council's opening
3. 2009 agricultural appraisal
4. Council's closings