



Appeal Decision

Site visit made on 18 January 2022

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/V0510/C/21/3266961

The Nursery, Mile End Road, Prickwillow, Ely CB7 4SJ

- 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 Act).
 - The appeal is by Nigel Peter Loker against an enforcement notice issued by East Cambridgeshire District Council.
 - The enforcement notice, ref. USE/19/00111EN1, was issued on 7 December 2020.
 - The breach of planning control alleged in the notice is the change of use of the land from agriculture to a mixed use of agriculture and residential purposes.
 - The requirement of the notice is to cease the use of the land as a permanent residence, whether in a vehicle or otherwise.
 - The period for compliance with the requirement is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. Mr Loker accepts says he uses a vehicle on the site to sleep in. However, he seeks to distinguish between living in a vehicle from living in a more permanent structure. This is essentially an argument on ground (b) - that there has been no breach of planning control as a matter of fact. I have treated the case as though a ground (b) appeal has been made.
3. Mr Loker says he does not want to make a planning application for residential use as suggested by the Council, and instead has asked whether there is some form of permitted development to allow him to live in a part of one of the structures on the site. Alternatively a Lawful Development Certificate (LDC) might be granted. The first of these is essentially an argument on ground (c), that there has been no breach of planning control. As before, I have treated the case as though a ground (c) appeal has been made.
4. As to the issue of a LDC, this would require a specific application to the Council, and is not a matter that can be dealt with in an enforcement appeal.
5. He also says that the reason for issuing the notice includes the statement that 'the breach of planning control occurred within the last ten years', whereas he says that he had bought the land in 2019 and not in 2009. However, the operative word in the reason is 'within' – that is, that the breach occurred at

some point between December 2010 and December 2020 when the notice was issued. It does not say that Mr Loker had changed the use to a mixed use for the entire ten year period.

Background

6. The appeal site is a piece of agricultural land on the south-east of the B1382 Mile End Road, and with the River Lark to the south. It is about 1 kilometre to the north-east of the village of Prickwillow. I estimate from the enforcement notice plan it is roughly 0.85 of a hectare in area. On the site near the access from the road are two mobile homes, a touring caravan and two Portacabins. Further into the site are several polytunnel frames. Mr Loker is a racing pigeon enthusiast, and there are also a pigeon loft and a 'summer house' used for his more valuable breeding pigeons. Much of the site is clear of vegetation and appears to be ready for planting.
7. Both mobile homes are used for storage of pigeon feed and other equipment. The caravan is where Mr Loker sleeps and has a kitchen sink, but the bathroom area is derelict beyond use. One of the Portacabins has an electrical supply, refrigerator and tea making facilities. The other contains what is little more than junk. There is also a septic tank on the site.
8. Although this provides very basic living conditions, Mr Loker does not have another address than 'The Nursery, Mile End Road', which suggests that this is a permanent arrangement.
9. An outline planning application by the previous site owner for the erection of a dwelling on the site was refused in 2017¹. A further application by that owner for retrospective permission to continue using a mobile home for residential purposes was withdrawn².
10. Mr Loker takes the view that the Council have pressurised him to make a planning application for residential use of the site, and that the previous applications indicate the site was not then in agricultural use but was essentially abandoned and more or less derelict. However, agriculture is essentially a default use of land. I appreciate that much has been done to restore the land to a workable condition, but the fact that it may have been in a sorry state before his purchase in 2019 does not mean abandonment of the use.
11. My understanding is that the Council were attempting to regularise the situation by making a formal determination as to whether the land was solely in agricultural use or in a mixed agricultural/residential use. However, it is the case that an application for a residential component of use may well have been refused.

The ground (e) appeal

This ground is that the enforcement notice has not been served as required by s.174(2)(e) of the Act, which states that copies of the enforcement notice were not served as required by s.172. This is known as a 'legal' ground in which the burden of proof is on the appellant to show that on the balance of probabilities this is the case.

¹ Decision notice ref. 17/01024/OUT, dated 22 December 2017.

² Application ref. 17/02053/FUL.

12. S.172(2) states:

A copy of an enforcement notice shall be served - (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

13. The enforcement notice was issued on 7 December 2020, and names Mr Loker as the person served. It is clear that he has been able to appeal against the notice within the required timeframe, and it follows that he must have received it. It also follows that the requirements of s.172(2) have been met.
14. The appellant says that he was not informed of the need to pay the prescribed fee for a ground (a) appeal and the deemed planning application. This is not properly an argument in a ground (e) appeal, but a complaint about general procedure. Nevertheless, I note that Mr Loker was informed of the fee requirement by letter on 28 January 2021, with a reminder dated 2 March 2021.
15. I also note that in his reply to the first letter - dated 3 February 2021 - he indicates he had at no time wanted or intended to use the site residentially and makes clear that agriculture is his intended use. This implies that he had no intention of making a ground (a) appeal.
16. I conclude that on the balance of probabilities the notice was served in accordance with the requirements of s.172(2)(e). The ground (e) appeal does not therefore succeed.

The 'hidden' ground (b) appeal

17. This is another 'legal' ground, and I have treated it as such.
18. Although the appellant attempts to distinguish between living in a vehicle and living in a more permanent structure, the fact is that a full-time residential use of the site is being made, however basic that may be, and this is alongside the agricultural use. As well as 'the vehicle' - which I take to be the caravan - one of the portacabins is used in conjunction for at least making hot drinks and possibly food. It matters not whether the appellant is living in a house, a caravan, or a vehicle, there is still a residential element to the use of the site. Hence, the allegation of the enforcement notice that there has been a change from agricultural use to a mixed use for agriculture and residential purposes.
19. I note here that the meaning of 'agriculture' for planning purposes is defined in s.336 of the Act. The relevant part of that definition is:
- 'Agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land).*
- While I saw that a large part of the site has been prepared for planting that would probably qualify as agriculture under this definition, the keeping, breeding and racing of pigeons would not be regarded as an agricultural activity.

20. I conclude that on the balance of probabilities the change from agricultural to a mixed agricultural/residential use of the site has occurred as a matter of fact. Had an appeal been made on ground (b) it would have failed.

The 'hidden' ground (c) appeal

21. Ground (c) is another 'legal' ground and I have dealt with it as above. One of the reasons commonly put forward in a ground (c) appeal is that there is not breach of planning control because the development is permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
22. There are indeed various types of development permitted under Part 6 of Schedule 2 to the GPDO, which relates to permitted development for agriculture or forestry. In particular, for a site of this size – that is, more than 0.4 of a hectare and less than 5 hectares, paragraph B of Part 6 sets out various developments that may be allowed. These include amongst others the extension or alteration of an agricultural building, installation of plant or machinery, provision of a sewer, and deposit of waste - if these are reasonably necessary for agricultural purposes, and subject to certain exceptions. However, there are no provisions for permitting a residential use.
23. I conclude that had an appeal been made on ground (c), on the balance of probabilities it would have failed.

The ground (f) appeal

24. This ground is that the steps required by the notice are excessive and that lesser steps would overcome the Council's objections. The appellant has not made any case under this ground, but says that he makes use of a vehicle on the site to sleep in. I have dealt with that matter under ground (b) above.
25. In this case the only way to remedy the breach of planning control is to cease using the land for a permanent residence, whether in a vehicle or otherwise, as is stated in the requirements of the notice. There are no lesser steps that would remedy the situation. The appeal on ground (f) must therefore fail.

The ground (g) appeal

26. This ground is that the compliance period is too short. Mr Loker argues that this is because of the then imminent Christmas break, the COVID-19 lockdown and difficulties he has with writing.
27. The compliance period will run from the date of my decision, rather than from the date the notice originally took effect – 18 January 2021. No Christmas break is imminent, and COVID-19 restrictions are now greatly relaxed. I appreciate that Mr Loker may have physical problems with writing but note that his daughter has been able to take over the drafting of at least one document, presumably dictated by her father.
28. In order to comply with the requirement to cease residential use Mr Loker will need to find alternative accommodation. I consider 9 months would be quite adequate to do this. Furthermore, it would also be long enough for him to obtain professional advice on ways in which he might make lawful use of the site, including the feasibility of making a LDC application. The Council have suggested he should do this, but to my knowledge he has not followed this up.

29. I therefore conclude that the ground (g) appeal does not succeed.

Conclusions

30. For the reasons given above I consider that the appeal should not succeed, and the enforcement notice should be upheld.

Stephen Brown

INSPECTOR