



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/U1105/C/21/3286809

Thorn Park Family Golf Centre, Salcombe Regis, Devon , EX10 0JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Malcolm Burrough against an enforcement notice issued by East Devon District Council.
 - The notice was issued on 11 October 2021.
 - The breach of planning control as alleged in the notice is the carrying out of a material change of use of the land to residential use by the stationing of a caravan in the approximate position shaded blue on Plan B attached to the notice.
 - The requirements of the notice are;
 - i) Permanently cease to use the caravan in the approximate position shaded blue on Plan B.
 - ii) Permanently remove from the land the caravan shown in the approximate position shaded blue on Plan B.
 - iii) Permanently remove from the land all materials and debris associated with compliance with steps (i) and (ii).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary matter

2. It was not necessary for me to carry out a site inspection in view of the grounds of appeal. In any event, as I was the inspector who determined the appeal APP/U1105/C/20/3262840 referred to in paragraph 4 below following a site inspection, I am familiar with the site.

The appeal site and relevant planning history

3. An appeal against the refusal of an LDC for the use of a caravan as an independent dwelling was dismissed in September 2020 (APP/U1105/X/20/3250786).
4. An enforcement notice was issued in October 2020 but was found to be a nullity on appeal (APP/U1105/C/20/3262840).

The appeal on ground (e)

5. An appeal on this ground is that the notice was not served as required by s172. The appellant states that the Council did not make any further enquiries of the appellant as to the use of the land and whether the caravan was occupied and if so by whom. Had they done so, they would have discovered that the caravan

- was occupied by Samantha Long. When issuing the notice the Council should have served it on her as an occupier of the land in accordance with s172(2) as a 'relevant Occupier' in occupation when issued and at the time of the appeal.
6. In response, the Council indicate that at the time of the issue of the notice the enforcement officer had no indication that the caravan was being occupied. On 12th September 2021 the officer visited the site and there was no discernible outward sign that the caravan was occupied and being used as permanent residential accommodation. The enforcement notice was issued by recorded delivery to the owner Mr Burrows at Coombe Wood Farm, Salcombe Regis Sidmouth and to Mr Burrows at Thorn Park Golf Centre, Salcombe Regis. No notice was posted on the caravan (to the occupier) as at the time of the issue and officer believed it was not occupied. According to the officer Mr Burrows has not notified Council Tax that the caravan is being used for permanent residential use and is currently occupied.
 7. The Council points out that the appellant has not explained how Samantha Long would be substantially prejudiced by the failure to have the notice served on her. They question whether Samantha Long has or had a contract to reside on site, the length of her stay or nature of residence or whether her occupation is sufficiently settled to confer a degree of control.
 8. The requirements regarding service of an enforcement notice as set out in s172 are very clear. A copy of a notice shall be served on the owner and on the occupier of the land to which it relates; and 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.
 9. The term 'owner' is defined in s336 but 'occupier' is not. Occupiers may be lessees, licensees by virtue of an oral or written licence, or trespassers who are settled enough to have a degree of control, even if they lack the right or capacity (standing or locus standi) to make an appeal. Relevant factors will include degree of control, duration of occupation and the nature of the occupancy.
 10. It is good practice for a local planning authority to establish facts relating to ownership and occupation either by contacting the owner or through the serving of a Planning Contravention Notice or Requisition for Information prior to taking enforcement action. Additionally, when carrying out investigations into possible breaches of planning control, what may be visually apparent on site may not be the case as a matter of fact. Again, good practice indicates that posting a notice on the land avoids wrong conclusions being drawn. Nor is the non-payment of Council Tax a reliable indicator of the occupation of land or premises.
 11. I have the power under s 176 (5) to disregard the failure to serve a copy of the notice on a person if that person would not be substantially prejudiced. However, I have no means to establish whether Samantha Long would have been substantially prejudiced, or indeed whether she still resides in the caravan or would have appealed had she been aware of the notice. Although it would have been helpful for the appellant to volunteer such information and I could invite Samantha Long to submit representations, I consider a more appropriate course of action would be to quash the notice. Provisions under s171B(4) enable the Council to serve a further enforcement notice if they consider it

expedient to do so. If this course is proceeded with, the Council should ensure that it is served in accordance with s172.

12. The appeal on this ground succeeds.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (e). The enforcement notice will be quashed.

14. In these circumstances, the appeal on ground (d) does not fall to be considered.

P N Jarratt

INSPECTOR