



Appeal Decision

Site visit made on 1 April 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2022

Appeal Ref: APP/Q1153/C/21/3289282

Land to the southeast of Blagrove Farm, Bratton Clovelly, EX21 5BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Tanya Dashwood against an enforcement notice issued by West Devon Borough Council.
- The notice, numbered ENF/026289, was issued on 17 November 2021.
- The breach of planning control as alleged in the notice is material change of use from agriculture to a mixed use of agriculture, residential use and use as a caravan site.
- The requirements of the notice are to;
 - 1) Cease the residential occupation of the land, and remove from the land, the rotary clothes line and all domestic paraphernalia items.
 - 2) Remove the caravan (shown in photograph 'A') sited in the approximate position marked with an X on the plan attached to the notice, from the land.
 - 3) Remove the frame tent (shown in photograph 'B') sited in the approximate position marked with an X on the plan, from the land.
 - 4) Remove the aviary (shown in photograph 'C') sited in the approximate position marked with an X on the plan, from the land.
 - 5) Remove all non-agricultural motor vehicles from the land (shown in photograph D).
- The period for compliance with the requirement 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (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.

Decision

1. It is directed that the enforcement notice is corrected by the deletion of
 - i) the words "sited in the approximate position marked with an X on the plan" from requirements 2, 3 and 4; and
 - ii) the word "aviary" in requirement 4 and its replacement with the words "cat run/enclosure".
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. As the field gate giving access to the site was locked at the time of my site visit and the appellant was not present, I was unable to enter the site. However, I was able to observe a Land Rover and a horse box from the road and see the caravan from the nearby bridleway. Together with the benefit of the

photographs submitted by the parties, I have sufficient information to determine the appeal.

4. Where appeals are made on legal grounds such as grounds (b) and (e), the onus of proof rests with the appellant and the standard of proof is on the balance of probability.

The site and relevant planning history

5. The appeal site is about 5 ha of agricultural land and woodland in open countryside accessible by a field gate from the public highway. Adjacent to the site entrance is an equestrian yard on one side and a storage area on the other side.
6. A planning application was submitted in July 2021 for the change of use of the land to equestrian, construction of equestrian facilities, temporary caravan and a log cabin. The application was not validated by the Council in the absence of further documents. The appellant states that some of these documents are in the process of preparation and has included them as part of the appeal submission.
7. A Planning Contravention Notice was returned by the appellant in August 2021.

The appeal on ground (e)

8. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. Section 172 sets out the requirements for the service of an enforcement notice but the appellant has introduced matters that relate more to the validity of the notice rather than any failure in the service of the notice on every owner and/or occupier of and/or any person having an interest in the land.
9. The appellant states that the location of the caravan is shown in the wrong position, there are multiple and inconsistent dates in the notice, and that no fee for the ground (a) appeal is specified.
10. The requirements of notice refer to a caravan, frame tent and aviary shown in the approximate position marked with an 'X' on the plan attached to the notice. As the appellant states, this is incorrect as the caravan, etc are located in an adjoining field which is also included in the appeal site. I am able to correct the notice by deleting reference to "sited in the approximate position marked with an X on the plan" in requirements 2, 3 and 4 without causing injustice to the appellant, as the appellant is clearly aware of the correct location.
11. It is normal practice for a notice to set out the date of issue and the date when it comes into effect, and this satisfies the requirements of s173.
12. The appellant claims that a document referred to by the Council referring to the fee for the ground (a) appeal was not enclosed with the notice. Whether this was the case or not is somewhat academic, as a fee must be paid where ground (a) is pleaded unless it falls within one of the exemptions, which it does not. It is not a requirement of s173 to indicate fee levels.
13. The appeal on this ground fails.

The appeal on ground (b)

14. An appeal on this ground is that a breach of planning control has not occurred as a matter of fact. The appellant asserts that there is no caravan site and that the breach of planning control is limited to the siting of a caravan and residential change of use of a small area of land and the remainder of the land remains agricultural.
15. In cases where a material change of use has occurred, it is necessary to establish the planning unit to assess the materiality of the change. The planning unit is usually the unit of occupation where the concept of physical and functional separation is key. The appellant's response to the Planning Contravention Notice indicates that the land was agricultural and that a caravan had been sited on the land since 18 May 2021. The Caravan and Control of Development Act 1960, as amended, defines the expression 'caravan site' and it is clear that this expression is appropriately used in the allegation.
16. The appellant states that alleged aviary is a cat run/enclosure. I propose to correct requirement 4 to reflect this, which I am able to do without causing injustice. With this correction, I am satisfied that the breach of control alleged in the notice has occurred as a matter of fact.
17. The appeal on this ground fails.

The appeal on ground (a)

18. An appeal on this ground is that planning permission should be granted for what is alleged. The main issue is whether an isolated dwelling in the open countryside can be justified in this location.
19. Paragraph 80 of the National Planning Policy Framework (the Framework) indicates that isolated homes in the countryside should be avoided except where, amongst other circumstances, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside
20. The appellant cites personal circumstances to justify the need for the residential caravan: these being to care for animals and to establish a rural enterprise; to allow for a planning application for the equestrian use to be prepared and submitted; the lack of available options for living accommodation; and, to enable care and access to treatment for her father, who has subsequently passed away. The appellant has a job in the local area for which she claims remaining on the site is crucial to her livelihood and to care for her animals.
21. Very little evidence has been submitted about the proposed rural enterprise, such as a business plan, anticipated levels of activity and other information necessary to justify a rural worker's dwelling, whether on a temporary or permanent basis.
22. The appellant acknowledges that the information is lacking but claims that this is because of lack of time, finance and the loss of a family member. The appellant accepts that a temporary one year permission and other conditions would be appropriate to allow for an application for the equestrian use to be submitted or to find alternative living arrangements and due to special personal circumstances.

23. The appeal contains nothing material that suggests permission should be granted in a location where national policies seek to avoid isolated homes. Similarly, local planning policies in the Plymouth and South West Devon Joint Local Plan reflect this approach in Policy DEV15. Personal circumstances are rarely such that they outweigh the policies in the Development Plan and in this case, the personal circumstances put forward are not substantive and at best reflect a lifestyle choice of the appellant.
24. Additionally, the location of the appeal site is remote from services and facilities and is in an unsustainable location. The use of the land for the siting of a residential caravan and associated residential paraphernalia would introduce unnecessary development which would adversely affect the character and appearance of the area which would not necessarily be mitigated through planting and landscaping. The location of the site between a storage yard and an equestrian use does not represent infill development.
25. Two neighbours have made representations about the use of the site to which the appellant has responded at length. In particular I note that the appellant clearly states that she has no intention of having a business on her land and the only equines on her land are her own. This appears to contradict the intention behind the planning statement for the non-validated application for a commercial equestrian centre.
26. The development fails to accord with policies in the Framework or in the Local Plan. The appeal on this ground fails.

The appeal on ground (f)

27. An appeal on this ground is that the requirements of the notice and lesser steps would overcome the objections.
28. The appellant states that the caravan does not need to be removed in order to remedy the breach, only the cessation of its residential use. It could remain and be used as a day room, for storage or for occasional overnight stays which would not constitute development.
29. The appellant does not indicate which part of planning law leads to this conclusion as the caravan has not been sited for the purposes of agriculture and no permission exists for equestrian use or for the siting of a caravan for any other purpose.
30. The motor vehicles referred to in requirement 5 in the notice are not stored or parked for the purposes of agriculture and only support the unlawful use of the site.
31. The tent is no longer on the site but to ensure that in the event that further tents may be erected it is prudent for step 3 in the requirements to remain.
32. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

33. As referred to under the ground (e) and (b) appeals above, I shall correct the requirements of the notice to delete reference to the approximate position of the caravan, frame tent and aviary and replace the reference of the aviary to a cat run/enclosure.

The appeal on ground (g)

34. An appeal on this ground is that the compliance period is too short. The appellant considers that a compliance period of 12 months is necessary to make arrangements for alternative living accommodation and land for the keeping of horses.
35. The compliance period in the notice is 6 months which I consider is reasonable in balancing the private interests of the appellant bound up in the unauthorised development with the public interest in the notice being complied with expeditiously to remove the harm caused by the development.
36. The appeal on this ground fails.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

INSPECTOR