



Appeal Decision

Site visit made on 26 April 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/Q1153/C/22/3291490

Land at Alston Cottage, Buckland Monachorum, PL20 7LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Trevor Nicholas against an enforcement notice issued by West Devon Borough Council.
- The notice, numbered 122001, was issued on 22 December 2021.
- The breach of planning control as alleged in the notice is a material change of use of the Land without planning permission from agriculture/equestrian to a mixed use of agriculture/equestrian and residential with the siting of polytunnels.
- The requirements of the notice are to:
 - i) Cease the use of the land for human habitation;
 - ii) Cease the use of the land for the siting of polytunnels;
 - iii) Remove from the land any polytunnels sited on the land;
 - iv) Restore the use of the land to an agricultural/equestrian use.
- The period for compliance with the requirements is two years.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) 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 be corrected by the deletion of the words "polytunnels" in the allegation and in steps ii) and iii) of the requirements; and be substituted with the word "polytunnel".
2. Subject to the corrections 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. The allegation and requirements refer to polytunnels in the plural. There is only one polytunnel and I therefore intend to correct the notice by amending it to refer to a single polytunnel, which I am able to do without any injustice to the parties.
4. The stables, barns, sheds, greenhouses, the solar panels and the building structure occupied as a dwelling are not the subject of the requirements of the notice, which alleges a material change of use and not operational development.

The site and relevant planning history

5. The site of 2.55 hectares is in open countryside within the Tamar Valley AONB and directly bordered by the Dartmoor National Park on two sides. Within the site are paddocks for the ponies, a single story dwelling of timber-framed construction clad in timber with a green roof, with an entrance hall, a living space, two bedrooms, kitchen and bathroom. Also on the site are a large number of stables/shelters (there are some 17 ponies currently on site), a large polytunnel (about 3m high and 27m long), numerous sheds, greenhouses, a dog walk, ponds and a solar panel array. Many trees and bushes have been planted within the site making it difficult to view the development as a whole. Opportunities to view the site from outside are very limited because of vegetation, hedgerows and fencing.
6. There are a number of properties to the south of the site and a car park close to the entrance of the site for use by visitors to the moorland.
7. An appeal against a refusal of planning permission for a dwelling and garage was dismissed in 1991 (T/APP/Q1153/A/91/186597/P8).
8. The owner of the site responded to a Planning Contravention Notice (PCN) in April 2020.

The appeal on ground (d)

9. An appeal on this ground is that at the time the enforcement was issued, it was too late to take action against the matters stated in the notice. Where legal grounds are appealed, the burden of proof rests with the appellant and the level of proof is on the balance of probabilities.
10. The appellant states that the 'residential use' of the land has continued for more than 10 years; that he has been living in the house (which is known as the Ark) from October 2011 onwards and as this is more than four years it is therefore immune from enforcement action. It is not claimed that the polytunnel has become lawful through the passage of time. The appellant and members of his family in their statements explain at length the work that has been undertaken over a period of years to establish a memorial garden, vegetable garden, orchard, fenced walkway, ponds and other features. They consider that the land has been in residential/domestic use since these became established. Whilst the family may have considered some or all of these features to demonstrate a mixed residential/agricultural use of the land, such a use cannot have started prior to the substantial completion and occupation of the dwelling, which is the date upon which this ground (d) appeal turns.
11. The appellant's claim that the building and its use as a dwelling is lawful is incorrect in the light of the time limits for enforcement action as set out in s171B. S171B(2) applies to the *change of use* of a building to a single dwelling. In this case the building subject to this case was erected unlawfully and used as a dwelling house from the outset, meaning that no change of use occurred as such, therefore the provisions of s171B(2) cannot apply. As the building was substantially completed more than four years before the date of the notice, it means that s171B(1) comes into play and no enforcement action can be taken against the building, such as requiring its demolition. However, the time limit for enforcement action against the use is ten years as provided for by s171B(3) and this is what the enforcement notice attacks.

12. The appellant in his statement indicates that he inherited Alston Plantation in 1988 and kept his own and his father's horses. In respect of the dwelling, work commenced on 1 April 2011 to prepare the site; in June joists and timbers were in place; by the end of July wall cladding had been installed; in August windows/doors were installed and the roof earthed and grassed. In September insulation and internal plasterboard, electrics, plumbing and a generator were in place.
13. From Oct 2011 the appellant states that he 'lived in the Ark for days at a time once every few weeks'. In March 2012 after his daughter was married the appellant spent more time at the Ark. He made the Ark more homely moving possessions to the Ark from his family house at Heathervale which was finally emptied in November 2013. It was not sold until March 2015 as the appellant was involved in building a house for another daughter next to Heathervale (known as Birchwood). This timeline is generally endorsed by the statements of his partner and family members.
14. However, none of the statements are statutory declarations and accordingly do not attach the same weight as sworn evidence. Furthermore, no documentary evidence has been presented to support that the appellant commenced occupation of the dwelling on the date claimed, such as Council Tax payments, receipts or invoices for materials or other documentation. Whilst the absence of supporting evidence is not necessarily fatal to the appellant's case, the date on which it is claimed the dwelling was substantially completed is at odds with the appellant's own admission that he did not take up full residency of the building until much later on and it is unclear whether earlier occupation was more akin to camping out. In the returned PCN received by the Council on 9/4/20 it was confirmed that the appellant is the owner of the land and that he had finished the house and had been living there since November 2013. This gives support to the earlier occupation of the building not being continuous but being of an intermittent nature and more akin to camping out.
15. The appellant draws attention to *Basingstoke and Deane BC v SCLG & Stockdale* [2009] EWHC 1012 (Admin), JPL 1583 in relation to the continuation of a breach but nevertheless it is necessary for the use to be affirmatively established. There is insufficient evidence to show this happened before 21 December 2011 in the light of the appellant acknowledging that he lived in the Ark for a few days at a time once every few weeks.
16. The planning unit coincides with the site identified in the enforcement notice and there is no evidence that its primary use was for anything other than for equestrian and agricultural purposes. At the time the dwelling was substantially complete and became occupied as such, a material change of use occurred to a mixed use of the planning unit albeit that the building had been used intermittently for residential purposes prior to that time. The appellant has not shown on the balance of probability that the residential use became established more than ten years before the date of the notice and the material change of use to a mixed agricultural/equestrian and residential use is therefore unlawful.
17. The appellant refers to Tithe Duties to Buckland Abbey which, as they had been paid off, the field was no longer deemed as agricultural land. This is not a relevant consideration where matters of planning law take precedence.
18. The appeal on this ground fails.

The appeal on ground (a)

19. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.
20. The appellant considers that the development is supported by paragraphs 60 and 80 of the National Planning Policy Framework (the Framework) in respect of boosting the supply of homes and the development of isolated homes in the open countryside. He considers that the development complies with the spirit of the advice in regard to the re-use of redundant buildings and enhancement to its setting in that the dwelling and garden cannot be seen from any public vantage points due to existing screening. The development is a windfall site that enhances or maintains the vitality of rural communities, although specific evidence in support of the claim has not been submitted.
21. The appellant refers to an appeal decision elsewhere to support a view that the appeal site can be regarded as being in an isolated countryside location and that the development should be considered as the re-use of a redundant or disused building and brownfield site for an appropriate use.
22. Policy TTV26 of the Plymouth and South West Devon Local Plan 2014-2034 relates to development in the countryside. The appellant argues compliance with elements of policy TTV26.
23. The site is in open countryside within an AONB adjacent to a National Park and in an area where planning permission would not normally be granted for an isolated dwelling or for residential use of land which is not in a sustainable location. Whilst there is some limited development south of the site, this does not advance the argument for a dwelling in this location. Furthermore, no significant evidence has been submitted to indicate that the development satisfies the requirements of policy TTV26. In particular the development does not protect or enhance public rights of way or bridleways; it does not re-use a traditional building; no case is argued that it is complementary to agricultural operations or essentially required for a proven agricultural, forestry or other occupational need that requires this countryside location.
24. The site is in a sensitive location. The Framework at paragraph 176 indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and Areas of Outstanding Natural Beauty. Despite the extent of vegetation around the perimeter of the site, the mixed use activities have given rise a degradation in the appearance of the area through the erection of various buildings, incongruous fencing materials and the erection of a polytunnel which is planted with a range of domestic plants. Whilst some of the structures do not form part of the allegation and may now be immune from enforcement action, it would be not in the wider interests of the AONB for the residential activities to continue longer than is absolutely necessary.
25. I am aware of the difficult personal circumstances that the appellant has been faced with but these do not outweigh the continuing harm created by the unlawful use. I note that the compliance period is two years and this is a generous period of time in which the appellant can make alternative accommodation arrangements.

26. As the development is contrary to Local Plan Policy TTV26 and to national policies set out in the Framework, the appeal on this ground fails..

Conclusion

27. 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