



Appeal Decision

Site visit made on 29 June 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal Ref: APP/E2734/C/21/3286298

Land comprising field at 422441 474252, Ringbeck Road, Kirkby Malzeard, North Yorkshire

- 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 appeal is made by Mr Conrad Gaunt against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice was issued on 23 September 2021.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of the land to use of land as a domestic allotment and the siting of a storage container.
- The requirements of the notice are 1) Cease the use of the land for domestic allotment; 2) Permanently remove the storage container from the site; 3) Remove all domestic paraphernalia including tarpaulins, bricks, blocks, plastic sheets, water butts, sawn timber, pallets, inflatable swimming pool, grow bags, plant pots; 4) Restore the land to its previous condition by replacing top soil and re-seeding with grass seed.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the notice is corrected to delete the relevant allegation and requirements, but otherwise the appeal fails, and the enforcement notice as corrected is upheld, as set out below in the formal decision.

Procedural Matters

1. There has not been an appeal on ground (a), that planning permission ought to be granted. The merits of the development, including its visual impact and any personal benefits that may arise from it, are not therefore before me for consideration in this case.
2. The appellant claims that the enforcement action results in a breach of his Human Rights. However, human rights considerations are not raised in the legal grounds of appeal, including grounds (b) and (c), where the questions are whether or not, as a matter of fact and law, the matters occurred or are in breach of planning control. The legal grounds do not allow for consideration of the effect of the decision on individuals and their rights.
3. It should further be noted that human rights considerations do not arise in ground (f). The issue is strictly whether the requirements are excessive to remedy the breach or harm as the case may be.

4. The appellant has raised concerns about the conduct of the Council in dealing with this case. However this is a matter that would be outside the remit of my considerations.

Reasons

The appeal on grounds (b) and (c)

5. The appeals are respectively that the matters alleged to constitute the breach of planning control have not occurred as a matter of fact (ground b); and that those matters (if they occurred) do not constitute a breach of planning control (ground c). The burden of proof rests with the appellant, with the standard of proof being the balance of probability.
6. In order to succeed on ground (b) the appellant would need to demonstrate that on the balance of probability the alleged development had not occurred.
7. The appeal site comprises a roughly rectangular field which is adjacent to, and accessed from, a quiet lane immediately to the north. The site is undisputed to be approximately 1 hectare in area. The field slopes steeply northwards towards the aforementioned lane. It was apparent from my visit that a vast majority of the appeal site has been left to grow naturally as a wild meadow. A relatively small portion of a low-lying area of the field, in the north-west corner, is being used to cultivate various fruit and vegetables. The appellant has used plastic bags and pots and several short wooden canes to contain individual plants and assist their growth. A further small area, demarcated by a mixture of timber planks, breeze blocks and straw bales, has been used to create a more formalised growing patch. There are also a number of water butts present.
8. There is a metal storage container situated in the north-west corner of the field, adjacent to the boundary hedge. The container has been covered with camouflage netting. It was evident from my visit that the container was being used to store miscellaneous items, including horticultural related tools and materials.
9. I am in no doubt that there is an allotment and storage container present on the site. The ground (b) appeal therefore fails. I will turn to deal with the alleged domestic character of the allotment use as part of the ground (c) appeal.
10. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land.
11. Having regard to the alleged use of the land, s55(2)(e) of the Act states, amongst other things, that the use of any land for the purposes of agriculture shall not be taken to involve development. S336 of the Act states that horticulture, fruit growing and seed growing fall within the definition of agriculture. From the information before me and my visit it seems to me that the use of the land for growing fruit and vegetables, including from seed, would constitute a horticultural use. There is no requirement for such activity to take place on a commercial basis, in order for it to meet the definition of agriculture in the Act.

12. In terms of the character of the use, the appeal site does not appear tied to a specific dwelling; the allotment area is not formally enclosed or segregated from the remainder of the field and does not have the appearance of being closely maintained in a manner akin to a residential garden. Whilst I acknowledge various materials have been utilised, including plastic 'grow bags' and pots, canes, blocks and planks, the current use of these materials is at a relatively small scale, with any impact on the character of the area being trivial in nature.
13. I acknowledge the appellant's reference to the significance of 'permaculture'. However, drawing the above considerations together, as a matter of fact and degree, I do not accept that the allotment has resulted in a material change from agricultural use to a more domesticated character. This element has not therefore resulted in a breach of planning control requiring planning permission. The ground (c) appeal succeeds in this specific respect.
14. I have had regard to the appeal decision drawn to my attention by the Council, where an appeal relating to a material change of use to an extended domestic garden was dismissed¹. However it seems to me that the circumstances of that case can be distinguished from the present appeal. Notably in that case there was no dispute that the land in question was in use as a domestic garden associated with a particular dwelling.
15. Turning to the storage container, as set out above, building operations on land constitute development. It is settled case law that the appropriate criteria for determining whether a structure constitutes a building are size, permanence and physical attachment.
16. In terms of size, whilst the container would probably have been brought to the site in one piece, such that it would not need to have been constructed *in situ*, it nevertheless provides a substantial storage space. I consider the structure to be of sufficient size to constitute a building.
17. With regard to permanence, it appears the container has been settled in place for a substantial period of time. Moreover, from the representations, the intention is to retain the structure in this position in order to support horticultural activities on the site. Self-evidently, the design of the structure does not lend itself to being moved around with ease. I consider that it has sufficient permanence to be regarded as a building.
18. In terms of physical attachment, the structure appears to rest on timber blocks, sited at each corner, rather than being physically affixed. I also acknowledge the lack of utility connections. Notwithstanding this, there is nothing that makes me consider that the weight of such a sizable structure would not be considerable and that it would not be sufficiently secured to the ground through its inherent weight.
19. As a matter of fact and degree I therefore consider that the structure meets all of the tests for being a building. Accordingly it constitutes development. Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), subject to limitations and conditions, states that certain types of works and operation which are reasonably necessary for the purposes of agriculture within that unit are 'permitted development'. Any

¹ Appeal Refs: APP/E2734/C/12/2172980 & 81

case for agricultural permitted development, would be predicated, amongst other things, on the land being in use for the purposes of an agricultural trade or business. In this respect I have had regard to the High Court judgment referred to by the Council². Notwithstanding the appellant's case, including an ambition to expand in future, I have not been provided with any evidence to persuade me that the horticultural activity has at any time been operated as a trade or business.

20. Even if it could be argued that the container is reasonably necessary for the purposes of agriculture, I find no other information, within the appellant's case, to indicate that the storage container would have been agricultural permitted development in relation to the scale of land in question. Notably the GPDO does not expressly allow for new buildings as permitted development on units of less than 5 hectares. There is no evidence provided to indicate that the container already has the benefit of express planning permission. The ground (c) appeal therefore fails with regard to the storage container.
21. It was apparent from my visit that an effort has been made to disguise the container and to site it within a low-lying part of the field in order to minimise visibility. However as stated above, in the absence of an appeal on ground (a), the planning merits of the development are not before me for consideration.

The appeal on ground (f)

22. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by discontinuing the use of the land or by restoring the land to its condition before the breach took place (s173 (4) (a)).
23. I have found the allotment use not to constitute a breach of planning control, and will therefore correct the notice to omit the requirement to cease the use of this element. It follows that it would be acceptable to keep on the site (at an appropriate scale) materials and equipment that could reasonably be deemed as ancillary to the current allotment use, including grow bags, plant pots, blocks, timber and water butts. For the avoidance of doubt whilst there may be items of miscellaneous domestic paraphernalia, currently stored on the site, that go beyond what could reasonably be described as ancillary to the allotment use, the alleged breach does not specifically 'attack' the storage of such items. Accordingly the requirement to remove all domestic paraphernalia will also be omitted.
24. Regarding the storage container, the notice requires that it is removed, and the land restored to its previous condition. The purpose of the notice is therefore to remedy the breach of planning control.
25. The appellant's ground (f) appeal is that the container is necessary for the secure and proportionate storage of materials. However, I have concluded above that the container requires planning permission and I am unable to consider the planning merits of the development in the absence of a ground (a) appeal. It is undisputed that topsoil and turf have been removed. Given that the purpose of the notice is to remedy the breach of planning control, to require this by the removal of the container and the subsequent restoration of

² *Hill v SSE & Bromley LBC* [1993] JPL 158

the land to its condition before the breach took place would be in accordance with the Act. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail, insofar as it relates to the container.

26. The appellant states that the “minimal timescales to comply are excessive”. A challenge to the compliance period is technically a ground (g) appeal. In any event I have not been provided with any evidence to persuade me that the six-month compliance period should be extended in this case.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed in part only. The notice is therefore corrected to delete the relevant allegation and requirements for one part of the matter the subject of the notice, but otherwise I will uphold the notice, with corrections, in relation to the other part.

Formal Decision

28. It is directed that the enforcement notice is corrected by:

The deletion of the wording describing the alleged breach of planning control, at Schedule 3, in its entirety, and substitution with the following wording:

“Without planning permission the siting of a storage container”; and

Deleting the requirements set out in Schedule 5 1) and Schedule 5 3) in their entirety; and

Inserting the words “occupied by the storage container” between the words “land” and “to” in Schedule 5 4); and

Renumbering Schedule 5 2) as Schedule 5 1) and Schedule 5 4) as Schedule 5 2).

29. Subject to the above corrections, the appeal on ground (c) is allowed insofar as it relates to ‘the material change of use of the land to use of land as a domestic allotment’ only, on Land comprising field at 422441 474252, Ringbeck Road, Kirkby Malzeard, North Yorkshire.
30. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the siting of a storage container on Land comprising field at 422441 474252, Ringbeck Road, Kirkby Malzeard, North Yorkshire.

Roy Merrett

INSPECTOR