
Appeal Decision

Site visit made on 16 August 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal Ref: APP/Q9495/C/21/3284463

Land at Fearon Place Farm, High Waterside, Kinniside, Ennerdale CA23 3AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Sarah Sharpe against an enforcement notice issued by the Lake District National Park Authority.
 - The enforcement notice, numbered E/2021/0179, was issued on 9 September 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use of the Land from use as agriculture to use for tented camping and the siting of holiday caravans.
 - The requirements of the notice are:
 - (a) Cease the use of the Land for tented camping and the siting of holiday caravans
 - (b) Remove all tents and holiday caravans from the land, and
 - (c) Remove all associated infrastructure, including but not limited to portable toilets, recycling bins, and water tanks from the Land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld

Procedural Matters

1. Two representations have been received in relation to this appeal. Some of the points made are directly relevant to the grounds on which the appeal has been made, and I have taken those points into account in considering that ground of appeal below. However, other points made in those representations go to the planning merits of the use alleged in the notice: for example, the effect on the rural landscape, nature conservation and flooding. Those are all matters that should be properly considered under an appeal on ground (a) as set out in section 174(2) of the 1990 Act: namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. There is no appeal on ground (a) before me, and for that reason I am not able to take those points into account.

The appeal on ground (d)

2. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.

3. It is important to note at this point that the use to which this ground of appeal relates is limited to that specified in the notice: in this case, the material change of use of the Land from use as agriculture to use for tented camping and the siting of holiday caravans (emphasis added). It follows that uses of a similar description but which are not precisely that stated in the notice cannot be considered as counting towards the ten year period of immunity required under section 171B(3) of the 1990 Act.
4. The planning history indicates that permission for a single caravan to be sited on part of the appeal site was granted in November 1964. It was then renewed, with the final permission expiring on 31 October 1968. In May 1969, planning permission was granted for an agricultural workers caravan to be sited close to the buildings at High Waterside, and was subsequently renewed on several occasions. The final permission requires the caravan to be removed by 31 October 1975. In any event, these permissions all relate to single caravans and the latter permission was not related to the current appeal site. There is therefore nothing in the planning history to indicate that the use alleged in the notice has taken place.
5. The appellant provides a copy of a letter from The Caravan Club dated 15 April 1982 in which the then landowner was given clearance to prepare his application for Certified Location, subject to various modifications being made to the vehicular access. The appellant has not provided any further documentation regarding that certification but, nevertheless, it may be deduced from other evidence before me that the site was operated as a caravan site for a period of time.
6. The difficulty is that the appellant has provided no details about the use certified by the Caravan Club, in terms of any limit on the number of caravans that could be stationed on the site or whether that certification was limited to just caravans and not tents. Neither has the appellant provided final certification by the Caravan Club once the necessary works to the vehicular access had been completed. For those reason, this evidence carries little weight.
7. There is some evidence before me that the for the stationing of a caravans, whether certified by the Caravan Club or not, ceased in or around 2013 (see below). Aerial photographs taken in 1994, 1995 and 2003 show one or more caravans on site, but no tents. The only aerial photograph taken after 2013, which was taken in October 2018, shows no caravans or tents on the site. A comparison with the photographs taken prior to that date show stark contrast in the appearance of the fields, with all three fields as having an appearance consistent with an agricultural use in the 2018 photograph.
8. I am mindful that there are only a few photographs provided and that they are widely spaced throughout the relevant time period. This limits the weight that I am able to attach to them one way or the other. Nevertheless, the photographic evidence tends to support the proposition that the use for the stationing of caravans ceased in or around 2013. Moreover, it is significant that none of the photographs show tents pitched on the appeal site.
9. The appellant has provided copies of a number of invoices, receipts and accounts which, it is claimed, relate to the use alleged in the notice. I do not propose to go through each of those documents individually here. However, having read it, my concern is that the evidence submitted is imprecise,

ambiguous and piecemeal. It is not clear from these documents that they relate specifically to the appeal site and/or the use alleged in the notice. There are significant time gaps in the evidence provided and the documents do not provide compelling evidence that the appeal site was actually being used for the purposes alleged in the notice continuously over the relevant period of time.

10. The appellant has also provided copies of two letters: one from Mr R.A. Jackson (undated) and the other from Mr Stephen Willis dated 23 August 2021. I note that neither letter is a sworn statement or affidavit, and this reduces the weight that I can attach to them.
11. In his letter, Mr Jackson indicates that 'High Waterside' has been used for "tents and caravans" for at least the last forty years. From the description in his letter, it is evident Mr Jackson is referring to the appeal site. He mentions use by the Caravan Club and is clear in his recollection that the use by the Caravan Club still had a few tents associated with it. However, the evidence provided by Mr Jackson is short on detail and is not supported by any documentary or photographic evidence.
12. The evidence of Mr Jackson is to some extent corroborated by Mr Willis, who indicates that the use was restricted to six tents or caravans. In his letter, Mr Willis states that the field by the river was never used as a camp site, but that evidence is directly contradicted by the photographic evidence provided by the Council, in which one photograph (taken in July 1994) clearly shows three caravans stationed in that field and close to the river edge. This inaccuracy undermines the veracity of Mr Willis' evidence in that regard.
13. Mr Willis goes on to indicate that the camp site has been closed since 2013 which, according to him, was stated by the appellant herself in the 25 June 2021 edition of 'In Cumbria' magazine. I have not been provided with a copy of that magazine article. However, given that Mr Willis has provided the actual date on which it was published and Mr Willis' letter was included as part of the appellant's own evidence (and therefore not challenged), I am inclined to attach considerable weight to that statement.
14. In summary, the evidence provided by the appellant falls short of showing that, on the balance of probability, the use alleged in the notice been continuous for a period of ten years beginning with the date of the breach. In particular, whilst there is some evidence that the appeal site has historically been used for the stationing of caravans, there is only very limited evidence that it has been used for tented camping. Moreover, some of the appellant's evidence is inherently contradictory, specifically as it includes evidence to the effect that the use of the appeal site for stationing of caravans ceased in 2013.
15. The corollary is that, more likely than not, the use alleged in the notice is a new use and is materially different in character from anything that went before. The evidence suggests that, on the balance of probability, this new use first commenced in 2021, when the Authority received the first complaint and which is the only year from which reviews of the campsite have been referenced. In that case, the breach of planning control alleged in the notice could therefore not possibly have been taking place continuously for a period of the years from the date when the breach first occurred and thereby achieved immunity from enforcement action under section 171B(3) of the 1990 Act.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

Paul Freer

INSPECTOR