
Appeal Decision

Site visit made on 10 August 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 1 September 2022

Appeal Ref: APP/Y9507/C/21/3282722

Land south of Harting Combe House, Sandy Lane, Rake, Rogate, West Sussex

- 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 Richard Phillips against an enforcement notice issued by Chichester District Council on behalf of the South Downs National Park Authority.
- The notice was issued on 5 August 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land the stationing of a mobile shepherd's hut for the purposes of human habitation together with the use of a wooden building (in the approximate position shown on the plan attached to the notice) for the purposes of human habitation.
- The requirements of the notice are (i) discontinue the use of the land for the stationing of a mobile shepherd's hut for the purposes of human habitation, (ii) discontinue the use of the said wooden building for the purposes of human habitation, (iii) remove the shepherd's hut from the land, (iv) demolish the said wooden building and remove the resulting debris from the land and (v) remove tables, benches and chairs from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed

Ground (d) appeal

1. This ground of appeal is that at the date the notice was issued no enforcement action could be taken. In order to succeed on this ground it is necessary for the Appellant to demonstrate that the use alleged (the stationing of a shepherd's hut and use of wooden building for the purposes of human habitation) took place for a period in excess of four years before the notice was issued and without any material change in the use since that date. The burden of proving relevant facts falls on the Appellant and the relevant test of evidence is the balance of probability.
2. The Appellant refers to 10 years as the relevant period of immunity for a change of use. But section 171B(2) of the 1990 Act as amended provides that where a breach of planning control consists of the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The development enforced against can reasonably be interpreted as falling within this category as they comprise one habitable residence with all

of the facilities required for day to day living. I shall determine the appeal accordingly.

Main Issue

3. The main issue is whether the shepherd's hut and wooden building enforced against were brought into continuous use for the purposes of human habitation for the relevant period of four years before the issue of the notice (ie 5 August 2017).

Reasons

4. The appeal site is situated in open countryside within the South Downs National Park adjacent to Rake Hanger Site of Special Scientific Interest which comprises an area of Ancient Woodland. It is accessed from a narrow lane/footpath. I saw at my site visit that the shepherd's hut provides sleeping accommodation, a dining area, cooking facilities and wood burner. A short walk away the wooden building provides shower and toilet facilities. Together they provide the facilities necessary for day to day living and human habitation. Inbetween the two a grassed areas is set out with a picnic bench and wooden benches and chairs around a fire pit for recreational enjoyment. There is no dispute that the planning unit in this case is the unit of occupation as shown by the red line on the plan attached to the notice and I have no reason to consider otherwise.
5. The Appellant says that the shepherd's hut has been on the land for in excess of 10 years and the wooden building in excess of 4 years. He says that they were repaired and refurbished in Summer 2017 and that their use as tourist accommodation began in 2018. In a Planning Contravention Notice (PCN) response he said that the toilet in the wooden building was used for farm workers and personal use until refurbished prior to being marketed as overnight accommodation with the shepherd's hut. He provides aerial photographs taken in 2005, 2013, 2017, 2018 and 2019 which he says show the shepherd's hut in situ and that from 2017 the photos show the wooden building.
6. The Council argue that regardless of when the hut and building were stationed on the land their previous use was extinguished when the hut was refurbished in 2018 to provide overnight accommodation and a larger wooden building fitted with shower and toilet facilities to be used in association with the hut. They argue that a new chapter in the planning history of the site commenced when the structures became a single habitable residence. They provide evidence in the form of a complaint in 2018 alleging the erection of a building and use of the land for Airbnb overnight accommodation, tourist accommodation adverts and marketing, the Appellant's response to a PCN, public rights of way plan. They also reference caselaw concerning the criteria for use as a single dwellinghouse.
7. It is not necessary for the Appellant's evidence to be independently corroborated in order to be relied upon but it does need to be precise and unambiguous. The photographs he produces are indistinct. I agree with him that the hut and building are not visible in them all due to tree canopies. But in any event the notice concerns a change of use and not operational development. The photos provide no evidence as to use. There is no dispute that the hut and building have been used for tourist accommodation since

2018. Any previous occasional use as recreational accommodation was intensified when following refurbishment and marketing the hut and building began use as tourist accommodation. The evidence provided by the Appellant does not demonstrate continuous use for the purposes of human habitation of the buildings enforced against for more than four years before the notice was issued. There is no evidence to counter the Council's claim that the hut and building became a single habitable residence in the Summer of 2018 when the land was marketed and subsequently used as overnight accommodation.

8. On balance I do not consider that the evidence produced by the Appellant satisfies the burden of proof that rests upon him in this appeal. He has not demonstrated that the use alleged (the stationing of a shepherd's hut and wooden building for the purposes of human habitation) took place for a period in excess of four years before the notice was issued and without any material change in the use since that date.
9. The Appellant says that he would be prepared to attend a public inquiry and swear to the hut and wooden building having been stationed on the land for in excess of 10 and 4 years respectively. But the main issue in this appeal concerns the period of use for human habitation and no evidence has been produced to counter the alleged breach. There is no justification before me to change the mode of determining this appeal through the written representation procedure. The onus of proof in this appeal rests on the Appellant and it has not been discharged.
10. The Appellant comments that the tables and benches are not something that enforcement action can rationally be taken against. There are no grounds of appeal before me that address the requirements of the notice. But it is established law that an enforcement notice may address works that facilitate a breach of planning control even where those works would not comprise development in their own right.
11. For the reasons given above, the appeal on ground (d) does not succeed and I shall uphold the enforcement notice.

Formal Decision

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

S. Prail

Inspector