



Appeal Decisions

Site visit made on 30 August 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal A Ref: APP/X1355/C/22/3300429

Appeal B Ref: APP/X1355/C/22/3300430

**Land lying to the north east of St Aidans Terrace, Trimdon Station
TS29 6BT**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Miss Sacha Leigh Bambrough (Appeal A) and Mrs Karriann Bambrough (Appeal B) against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 6 May 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Land from agricultural land to a mixed use comprising of an equestrian use and a dog exercise area; associated storage of 2 no. large static caravan(s) and attached timber extensions, used in connection with the unauthorised mixed use; and unauthorised excavation work(s) undertaken to create hardstanding area(s) within the subject site to accommodate access / egress arrangements.
- The requirements of the notice are a. Bring about the permanent cessation of the mixed use of the site, comprising of an equestrian use and dog exercise area and associated storage of the 2no large static caravans used in connection with the unauthorised mixed use; b. Permanently and completely remove caravan A and attached wooden structure from the site; c. Permanently and completely remove caravan B and attached wooden structure from the site; d. Dismantle the close-boarded wooden fence enclosure located next to caravan A and permanently remove all materials, including associated fixtures and fittings from the site; e. Remove all hardstanding area(s) that have been created within the subject site, backfill all of these area(s) with suitable materials and replace topsoil to match adjacent land levels and re-seed and return all of these area(s) of land back to its previous grassed condition and appearance.
- The period for compliance with the requirements is 12 weeks.
- The appeals are made on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Procedural Matters

1. In this case there has not been an appeal on ground (a), that planning permission should be granted for the development alleged in the notice. Accordingly the question of the merits of the development, including the appellants' intentions and ambitions to develop the site and any benefits that the development may offer, are not before me for consideration.
2. The appellants have referred to the provisions set out in legal covenants, within registered title transfer documents, allowing for certain uses on the site.

However, any rights conferred by private covenants (irrespective of who previously owned the land) would be independent of, and have no influence over, the control over the development of land under the Act.

3. The appellants' case is based on various so-called legal grounds of appeal. With each of the legal grounds the burden of proof rests with the appellants, with the standard of proof being the balance of probability. The appellants have provided, as part of their statement, some historical images which appear to depict mining related development on part of the site. However, it is unclear how this information supports any of the legal grounds of appeal.
4. The appellant, in respect of Appeal A, suggests that the Council did not serve her with the enforcement notice at her correct address. I have dealt with this issue below as a 'hidden' appeal on ground (e).
5. One of the requirements of the notice is to dismantle the close-boarded wooden fence enclosure, located next to caravan A. However the fence is not cited within the matters that constitute the breach of planning control. Therefore whilst there has not been an appeal on ground (f), this specific requirement would exceed what is necessary to remedy the breach of planning control. I am satisfied that the notice can be corrected accordingly, by omitting this requirement, without resulting in injustice to the parties.
6. The appellants are critical as to how this matter has been dealt with by the Council. Whether there is any merit in this point is not, however, relevant to my decision.

The appeal on ground (e)

7. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act, in that the notice was not sent to the appellant's address. However, even if the notice had not been correctly served, section 176(5) of the Act provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced by the failure to serve them.
8. The appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. There is no suggestion that any other person may have been prejudiced. I conclude therefore that in the circumstances of this case any failure by the Council in terms of service of the enforcement notice may be disregarded.
9. Consequently the appeal on ground (e) fails.

The appeals on ground (b)

10. The appeal is that the matters alleged to constitute the breach of planning control have not occurred as a matter of fact.
11. From the representations it is apparent that there is no dispute that the appellant's horses are being kept and looked after on the site, and that there is an equestrian use taking place there. As set out in my previous appeal decision relating to this matter, the parties agree that there has been a change of use to a mixed use of land, which includes an equestrian use¹. In addition, the appellants' statement refers to the land being used for equestrian purposes

¹ Appeal refs APP/X1355/C/21/3286391 and APP/X1355/C/21/3286392

since February 2017. Furthermore I observed the presence of horses on the site during my visit.

12. There is also no dispute that there are two large static caravans on the site with attached timber extensions; nor that one of the caravans (shown as Caravan A on the plan attached to the notice), is being used to provide welfare and refreshment facilities and for the storage of riding equipment in connection with the equestrian use². I also observed the same during my visit, including the storage of riding equipment within its associated timber extension. I noted that water, electricity and gas has been made available to Caravan A.
13. It was apparent from my visit that an area of hardstanding has been created to facilitate vehicular access and egress to and from the site. The appellants' case therefore appears to focus on the alleged dog exercise area. In this regard the aforementioned PCN response referred to one of the static caravans being prepared for use in connection with a dog care business. The appellants have also submitted correspondence with the Council and Valuation Office Agency, dated August 2020, regarding an application for Small Business Rate Relief in respect of dog exercise and day care. It appears that this application included reference to using one of the caravans (corresponding with Caravan B as identified in the notice) in connection with the same use, and there is nothing to persuade me, on the balance of probability, that this use would not also have included the timber extension attached to that caravan. Furthermore the appellants have not disputed the point made by the Council, that when asked about the dog care business it was accepted that this had been taking place³.
14. The appellants' now say in their statement that they are willing to cease the use of the land for the dog walking business. Indeed at the time of my visit there were no signs that this use was taking place. However, the question is not whether the alleged use is evident at the time of the site visit or whether the proposal is to continue the use, rather whether the breach had occurred by the date of issue of the notice. On the balance of probability, for the aforementioned reasons I conclude that the alleged dog exercise area had occurred. I am also satisfied that the other alleged use and operations have occurred. The ground (b) appeals must fail.

The appeals on ground (c)

15. The appeal is that the matters alleged to constitute the breach of planning control, if they occurred, do not constitute a breach of planning control. To succeed on this ground it would be necessary for the appellants to demonstrate, on the balance of probability, that the alleged breach of planning control did not involve 'development' or require planning permission.
16. The appellants have provided limited information as to why they consider the various uses and structures would not constitute development or require planning permission. Reference has been made to an allowance for equestrian use within the land title documents. However, as set out above, this in itself does not have any bearing on the planning status of the land. Reference is also made to the Council being aware of the proposed uses when the land was registered for business rates in 2020, but raised no issue at the time. Whilst this may or may not be indicative of poor communication within the Council, it

² See for example Planning Contravention Notice (PCN) response – dated 12 March 2021.

³ See Council's 'Delegated Enforcement Report'.

does not bear on the question of whether there has actually been a breach of planning control.

17. 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.
18. There is no dispute that the previous use of the site was for agriculture. It seems to me that the use of the land for equestrian purposes and for the exercising of dogs would be likely to generate a pattern of more frequent comings and goings, associated with the day-to-day care of animals, hobby related use and potentially visiting clientele or service providers, when compared with agricultural use. There would potentially be more disturbance associated with the alleged activities taking place on the site, for example from animal related noise. There may also potentially be odours arising from the uses that would not have previously been present. In addition the introduction of welfare and storage facilities, associated with the equestrian use, results in a material change to the visual character of the land.
19. It is likely that the effects of these uses would be noticeable outside the site and that as such a material change of use to the alleged mixed use has occurred. I should emphasise that this does not mean that such impacts could not be mitigated, depending on specific circumstances, but this is not a matter relevant to an appeal on ground (c) where the merits of the development are not being considered. As a material change of use, planning permission would have been required for the development.
20. The appellants have introduced the argument within their final comments that the horse related activity on the site falls within the definition of agriculture, as the horses simply graze on the land. The appellants thus imply that the alleged material change to the equestrian use has not in fact occurred, and that as such this does not constitute a breach of planning control. Whilst it is true that the use of land as grazing land falls within the definition of agriculture, as set out in s336 of the Act, it seems to me that the activity in this case involves more than simply putting the horses out to graze. This is evidenced in statements provided by the appellants, including in relation to the previous appeal, that the land is used for horse riding; also that the provision of the caravan is needed to help look after the animals, in terms of the provision of welfare facilities for the appellants and the safe storage of supplementary feeds, including for the horses, and riding equipment.
21. As to the alleged caravans, attached timber extensions and the hardstanding area, it is possible for an enforcement notice to require the removal of works that may or may not in themselves amount to development, but that facilitate and are integral to the unauthorised material change of use. I have set out above that the alleged caravans, attached timber extensions and the hardstanding area are associated with the alleged mixed use. They were placed on the site with a view to facilitating the equestrian use and the dog exercise use and are integral to those uses, albeit that it is proposed to cease the latter use. Therefore irrespective of whether the caravans, extensions and hardstanding may be regarded as operational development (and I acknowledge the appellants' point that the caravans are on wheels), for this reason it cannot be claimed that they are not in breach of planning control.

22. Even if it could be argued that the hardstanding area was not specifically associated with the alleged unauthorised use, but rather with general access to and egress from the site, there is nothing to persuade me that the creation of this area did not constitute an engineering operation in its own right. As such, the hardstanding would also constitute development requiring planning permission on this basis.
23. Drawing the above considerations together the ground (c) appeals fail.

The appeals on ground (d)

24. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. In order to succeed on this ground, in accordance with Section 171B(3) of the Act, it would be necessary for the appellants to show, on the balance of probability, that the alleged mixed use of the site had commenced at least ten years before the notice was issued, that is by 6 May 2012, and had continued in such use over a ten-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity. If this cannot be shown then the use, together with the various facilitating structures and works referred to in the alleged breach of planning control, would not be immune from enforcement action.
25. The appellants' claim that the equestrian use commenced on the site in February 2017. There is no evidence to suggest when the dog exercise use commenced. A photograph is provided by the appellant, which appears to be dated May 2017, and is purported to be showing the delivery of a cabin to the site.
26. The Council has provided an aerial photograph of the site, dated from 2018. I concur with the Council that this image appears to show the appeal site devoid of any development. Notwithstanding this, and having regard to various other screenshots provided by the appellants, there has been no evidence presented to persuade me, on the balance of probability, that the alleged mixed use has continued on the site for a minimum period of ten years, in accordance with the requisite immunity period.
27. Even if it could be argued that the hardstanding area was not specifically associated with the alleged unauthorised use, but rather with the general access to and egress from the site in itself, it would still then be necessary for the appellants to demonstrate that the hardstanding had been present for a period of four years beginning with the date on which the operations were 'substantially completed'. There is no evidence presented to persuade me, on the balance of probability, that this has been the case.
28. The ground (d) appeals therefore fail.

Conclusion

29. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

30. It is directed that the enforcement notice is corrected by the deletion of the wording at paragraph 5 d in its entirety.
31. Subject to the correction the appeals are dismissed and the enforcement notice is upheld.

R Merrett

INSPECTOR