



Appeal Decision

Site visit made on 21 November 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2022

Appeal Ref: APP/D2510/C/22/3300400

Land Off Moor Lane, Horsington, Lincolnshire, LN10 5EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Peak Earth against an enforcement notice issued by East Lindsey District Council.
 - The notice, numbered EC/087/229/21, was issued on 12 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of land from agricultural to a mixed use comprising of agricultural and recreational use, the erection of a timber building for residential use and siting of a storage container.
 - The requirements of the notice are: i. cease the residential use of the land; and ii. remove from the land the timber building outlined in blue on the attached plan marked Appendix A.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - i. Changing “(Material Change of Use)” in the heading to “(Material Change of Use and Operational Development)”
 - ii. Substituting the following text for the first paragraph of Reasons For Issuing the Notice – “It would appear to the Council that the breach of planning control in the case of the material change of use has taken place within the last ten years and, in the case of the operational development, within the last four years.

Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The Council has indicated that it finds the agricultural and recreational elements of the alleged mixed use to be acceptable and, in the requirements of the notice, has under-enforced such that these uses may continue, along with the retention of the storage container referred to in the breach. The other container on the land already benefits from planning permission granted in 2018.

3. The enforcement notice is headed "Material Change of Use" and indicates that the breach of planning control has taken place within the last ten years. However, the erection of the timber building for residential use, and the siting of the container, comprise operational developments which, following the guidance in *Murfitt*¹, represent something which is obvious and permanent and should be dealt with in a period of four years, as opposed to something that has an ancillary purpose to a material change of use.
4. In this case, I feel able to correct the notice without injustice to either party. The appellant appears to understand exactly which development is targeted by the notice and there is no indication that the timber building might have been substantially complete more than 4 years prior to the issue of the notice, such that an appeal on ground (d) might have had any prospect of success; it is not referred to in the Planning Contravention Notice of 24 March 2021 and does not appear in the contemporaneous photographs attached to that Notice.

The appeal on ground (e)

5. The Council has stated that copies of the notice were duly served on the appellant; certificates of service are attached to the Council's statement. It appears that the appellant acknowledged the service in subsequent correspondence with the Council.
6. The appellant's case is based on a lack of clarity in the guidance notes attached to the notice. His reading of these notes is that they fail to indicate that the fee is required only if an appeal is made on ground (a). However, the appellant appears to have understood this and has chosen not to pay the fee and lodge an appeal on ground (a). In my view, copies of the notice were properly served, there has been no injustice arising from any lack of clarity in the Council's notes and the appeal on ground (e) fails.

The appeal on ground (b)

7. This ground is that the breach alleged in the notice has not occurred as a matter of fact. However, there is no doubt that a timber building has been erected and that there is a 2nd storage container on the land. In his statement, the appellant indicates that "our main volunteer sometimes stays over". I also note that a planning application was made in 2021 for "*Retention* (my emphasis) of extensions and alterations to existing wooden building and shipping container to provide a dwelling ..." (ref: S/087/1307/21). The appellant's case appears to relate more to ground (c), which I shall go on to consider. However, the appeal on ground (b) fails.

The appeal on ground (c)

8. The authorised use of the land is for agricultural purposes. The introduction of additional uses for recreational and residential purposes would result in a mixed use comprising a material change of use requiring planning permission. The appellant states that the timber building was erected as a shelter for volunteers. However, whether it was erected as a shelter or as a dwelling, this amounted to operational development for which planning permission was required; there are no permitted development rights for such a development. The development alleged in the notice comprised a breach of planning control and the appeal on ground (c) therefore fails.

¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

The appeal on ground (f)

9. The intention of the notice in relation to the timber building appears to be to remedy the breach. The requirements to cease the use and to remove the timber building appear to be no more than is required to remedy this particular part of the breach. The Courts^{2 3} have held that there is no power to consider an appeal made under ground (f) on the basis that the requirements of the notice exceed what is necessary to remedy the injury to amenity when, as in this case, there is no appeal seeking planning permission on ground (a). Accordingly, I am unable to deal with general planning considerations, such as whether the timber building has a valid purpose as an agricultural shelter, through ground (f). The appeal on ground (f) fails.

The appeal on ground (g)

10. The appeal form indicates an appeal on ground (g) but the appellant has not indicated why the compliance month period is unsuitable and what alternative period he seeks. To my mind, 3 months appears an adequate period of time in which to effect the removal of the timber building. The Council has the power to vary this period should it be so minded.

B S Rogers

INSPECTOR

² *Miaris v SSCLG & Bath & N.E. Somerset Council* [2016] EWCA1564 (Admin)

³ *Wyatt Bros (Oxford) Ltd v SSETR & Oxfordshire CC* [2001]PLCR 161