
Appeal Decision

Inquiry Held on 1 November 2022

Site visit made on 2 November 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/B3438/C/20/3244823

The unit of occupied land to the rear of Fox's Croft, Ankors Lane, Thorncliffe ST13 7LP

- 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 Eric Fox against an enforcement notice issued by Staffordshire Moorlands District Council.
 - The enforcement notice was issued on 29 November 2019.
 - The breach of planning control as alleged in the notice is the erection of a portal frame shed, the construction of a bound concrete hardstanding, and the provision of a hard surface with compacted plainings ("the Operations"); and, on completion of those "Operations", the change of use on the land to a use for the purposes of keeping, maintaining, repairing and restoring machinery, vehicles and trailers ("the Use").
 - The requirements of the notice are:
 - A. Discontinue "the Use" by ceasing to use "the Land" to keep, maintain, repair and restore machinery, vehicles and trailers; and to store items, effects, materials, equipment and tools that are used in connection with "the Use".
- AND
- B. Restore "the Land" to its condition before the breach took place by taking the following steps:
 - i. Remove from "the Land" and the inside of the portal frame shed all machinery, vehicles and trailers and all of the items, effects, materials, equipment and tools that are used and stored in connection with "the Use";
 - ii. Break up and remove from "the Land" all of the bound concrete hardstanding and the compacted plainings from the outside of the portal frame shed;
 - iii. Dismantle and remove from "the Land" the whole of the portal frame shed (to comply with this step the concrete base upon which the portal frame shed has been built must also be broken up and removed from "the Land"; and,
 - iv. Return "the Land" to an even grassed surface.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. With respect to the erection of a portal frame shed, the appeal is allowed on ground (a), the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a portal frame shed on land at Fox's Croft, Ankors Lane, Thorncliffe ST13 7LP, subject to the following conditions:

- 1) The portal frame shed shall be used only by the residents of Fox's Croft, Ankors Lane, Thorncliffe ST13 7LP to store, repair, maintain and restore vehicles or machines kept for their vintage or collectable value as a hobby or recreational interest and for purposes incidental to the enjoyment of the dwellinghouse and for no other purposes whatsoever, including for the avoidance of any doubt any purposes falling within Classes B1, B2 or B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 2) Within two months of the date of this permission there shall have been submitted to and approved in writing by the local planning authority a scheme of hedgerow landscaping using a native mix of species around the western, eastern and southern perimeter of the Land.
 - 3) All planting comprised in the approved details of landscaping shall be carried out in the first planting season following the approval of the scheme of hedgerow landscaping; and any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The hedgerow shall be maintained throughout the life of the development at a height of not less than 1.5 metres from ground level.
 - 4) Within one month of the date of this permission, an obvious, open and unobstructed route shall be provided and signed clearly for walkers, at all times, to access the route of footpath Tittesworth No. 5 from the roadside of Ankors Lane. The route shall remain maintained, available and unobstructed in perpetuity.
2. With respect to the construction of a bound concrete hardstanding and the provision of a hard surface with compacted plainings, the appeal is allowed on ground (c) and the enforcement notice is quashed with respect to that part of "the Operations".
 3. With respect to the alleged change of use on the land to a use for the purposes of keeping, maintaining, repairing and restoring machinery, vehicles and trailers, the appeal is allowed on ground (b) and the enforcement notice is quashed with respect to "the Use".

Application for Costs

4. At the Inquiry an application for costs was made by Mr Eric Fox against Staffordshire Moorlands District Council. This application is the subject of a separate Decision.

Preliminary Matters – The Enforcement Notice

5. The Notice states that both the alleged operational development and change of use occurred within the four years before it was issued. The Council has confirmed that this does not purport to set out the legal time limits, but merely is confirming that in their view the breaches have occurred as a matter of fact. Therefore, there is no need for me to amend the Notice in this regard.
6. The Notice refers to the phrase "and, on completion of those "Operations" to explain when it appears to the Council that the change of use of the land

occurred and to provide details of the sequence of alleged unauthorised developments. It is clear to me that the Council's case is that the change of use occurred after the erection of the portal frame shed. That forms the basis of my decision. As was made clear at the Inquiry it is common ground that there is no need to amend the wording of the Notice to delete reference to the alleged sequence of events.

7. During the Inquiry it became clear that the area of concrete laid as a base for the original shed was constructed more than four years before the Notice was issued. Therefore, that part of the development could be excluded from the Enforcement without causing injustice to either of the main parties. This part of the "Operation" is discussed, below.

Appeal Site

8. The appeal site comprises an area of land and an associated building situated to the rear of Fox's Croft, which is a large red brick built dormer bungalow. It is situated off Ankors Lane and has a front garden area comprising shrubbery and driveway. The property is situated within the small hamlet of Thorncliffe and the surroundings are rural. To the rear of the bungalow is a garden area with a garage and portal frame shed and hardstanding areas, beyond which is open countryside.
9. To the immediate east of the land there is a track leading to fields which also provides the route for public footpath Tittesworth Parish No. 5. The land the subject of the enforcement notice is approximately 260 square metres in area and is situated directly to the rear of the bungalow. A relatively large portal frame shed has been built on the land with south facing roller shutters facing away from the bungalow towards open fields. The shutters open onto a bound concrete pad which is surrounded by crushed stone plainings that provide an additional hard surfaced area.

The Appeal on Ground (b)

10. With respect to the appeal on ground (b), the appellant accepts that the "Operations" have taken place as a matter of fact. The appellant also accepts that the land has been used for the purposes of keeping, maintaining, repairing and restoring machinery, vehicles and trailers. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the *change* of use as alleged had not occurred as a matter of fact.
11. The Council has argued that the operational development comprising the erection of a portal frame shed, the construction of a bound concrete hardstanding, and the provision of a hard surface with compacted plainings facilitated the change of use of the land whereas the appellant has declared in a statutory declaration and orally under oath that he has always used the land in the same way for his hobby of restoring tractors and a change of use has not occurred. Indeed, the appellant has stated that restoring tractors is a long term hobby and that in the past 15 years or so he has had more time to participate in his hobby, but over time there have varying numbers of tractors on the land the subject of this appeal. When he moved into the property, he brought his father's blue tractor with him and it can clearly be seen on photographs dated June 2005. Furthermore, the photographs associated with the Lawful Development Certificate application in 2016 also show at least four

tractors on the site and 2018 photographs show five tractors on the site; either inside or outside the portal frame shed.

12. I have no evidence that the alleged use has intensified since 2017 when the portal frame shed was erected, nor is there evidence that the use for keeping, maintaining, repairing and restoring machinery, vehicles and trailers became the only use of the land. Indeed, the photographs taken by the Council in 2018 show tractors, associated equipment and domestic related paraphernalia including building materials, timber and other equipment that may be used in association with the residential use of the land. The appellant stated that other domestic storage items would have been present in the building at that time but are hidden by the tractors and are not seen in the photographs. Having visited the site I do not doubt that this may well have been the case.
13. The 2018 photographs also show a JCB digger on site, but the appellant's explanation for that is that it was there on a temporary basis for carrying out work on the land and it has not been on site since. Therefore, its presence does not mean that a material change of use of the land has taken place.
14. Consequently, whilst I can see that the land has as a matter of fact been used for the purposes of keeping, maintaining, repairing and restoring tractors, that is not the sole or exclusive use of the land distinctive from its wider general domestic use, nor did the use alleged commence on the completion of the operations stated in the Enforcement Notice.
15. Therefore, with respect to the alleged change of use of the land, the appeal on ground (b) succeeds. Accordingly, with respect to the change of use of the land the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended and other grounds of appeal do not need to be considered.

The Appeal on Ground (c)

16. The ground of appeal is that the matter alleged does not constitute a breach of planning control. Since the appeal has succeeded on ground (b) with specific reference to the use and it is common ground that the building falls outside permitted development tolerances, my consideration of the appeal on ground (c) is restricted to the bound concrete hardstanding and the provision of a hard surface with compacted plainings.
17. The appellant argues that this part of the "Operations" is permitted development under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), Schedule 2, Part 1, Class F. The courts have held¹ that *"It is not possible to give a comprehensive definition of a curtilage and one can only describe a curtilage when one sees it and decides whether it was curtilage, or not"*. It has also been held that the essential test is whether the land is so intimately connected with the building as to lead to the conclusion that the former forms part and parcel of the latter. There are a number of factors which can be applied to determine whether the

¹ Blackbushe Airport Ltd v Hampshire County Council and Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398

test is met, including the guidance provided in the *Challenge Fencing*² case. , including ownership, use, function, layout, size and enclosure.

18. Having visited the appeal site and considered each of these factors I conclude that the ownership, use and function between the dwelling known as Fox's Croft and the appeal site has not changed and has been constant and consistent for approximately 20 years. The land has always been used in connection with the dwelling and is not used separately from the dwelling, but in a manner which can be described as being incidental to the enjoyment of the dwellinghouse. For the past 20 years the dwelling and land have been in the same ownership as far as the evidence shows and the land has been fenced in with the dwelling since 2000, divided from agricultural land to the south.
19. In addition, I found that the land is immediately adjacent to the dwelling and the building the subject of this appeal is very close to the rear of the dwelling, is accessed only a very short distance from the back door of the house. There is no functional separation between the dwellinghouse and the appeal site nor are there any physical barriers between them.
20. With respect to defining curtilage, size is not a determinative factor but, in any case, the land the subject of the enforcement notice is not excessively or unreasonably large for the purpose for which it is used. Furthermore, the land is incidental to the appellant's enjoyment of his dwellinghouse; it is used on a daily basis for working on tractors and other machinery, but also for storage of items connected with maintenance and restoration of the tractors, other domestic items such as refrigerator, washing machines, a television and play equipment, as a sheltered indoor play area for children and for other domestic purposes.
21. Therefore, based on the submitted evidence and in my judgement, as a matter of fact and degree the land the subject of the Notice is within the curtilage of the dwellinghouse known as Fox's Croft. The provision of a hard surface comprises operational development within the meaning of s55 of the Act for which, s57 indicates, planning permission is required. Since planning permission has not been granted for the development, the question of whether or not there has been a breach of planning control falls on whether the construction of a concrete hardstanding and a hard surface with compacted plainings is permitted development by virtue of Article 3 of the GPDO under Schedule 2, Part 1, Class F hard surfaces incidental to the enjoyment of a dwellinghouse. Under Class F, development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; the replacement in whole or in part of such a surface is permitted development.
22. It is my understanding that plainings were first spread on the land in early 2002, the original concrete pad was laid in 2002/2003 and the second concrete pad in May 2016. They were all in place when the Council granted a Lawful Development Certificate for use of land as a domestic garden and other uses incidental to the enjoyment of the dwelling known as Fox's Croft under reference SMD/2016/0607 on 26 June 2017. Since the concrete hardstanding and plainings are located within the curtilage of the dwellinghouse and the appeal has succeeded on ground (b) because the purpose of the land is for

² Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin)

keeping, maintaining, repairing and restoring tractors, but that is not the sole or exclusive use of the land distinctive from its wider general domestic use, they constitute permitted development.

23. The Council also argues that the concrete pad goes beyond the provision of a hard surface but involves the construction of raised and altered ground levels which is itself sufficient to dismiss the appeal on ground (c). However, it is clear to me that providing a hard surface would in some way raise the level of land. Therefore, that is not a reason in itself to conclude that the hardstanding falls outside the scope of permitted development. In addition, the inclusion of the "*associated hard standing*" in the description of the proposal under planning application reference SMD/2018/0753 may imply that it required planning permission but falls short of providing clear evidence that this is so. I do not find that the appellant's previous application for the hardstanding under SMD/2018/0753 is evidence that permission is required.
24. There is also the question as to whether or not the replenishment of plainings in 2017 was a breach of planning control. Given my conclusions with respect to the plainings, above, and the fact that the replenishment is not operational development within the definition of development, it does not constitute a breach of planning control.
25. Therefore, with respect to the construction of a bound concrete hardstanding, and the provision of a hard surface with compacted plainings, the appeal on ground (c) succeeds. Accordingly, with respect to this part of the operational development, the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

The Appeal on Ground (d)

26. For the avoidance of doubt, the appellant does not allege that the portal frame shed is immune from enforcement action through the passage of time. Therefore, the appeal on ground (d) must fail.

The Appeal on Ground (a)

27. The ground of appeal is that planning permission should be granted. As a consequence of my decision on other grounds of appeal the only matter which needs to be considered under ground (a) as a deemed planning application is the erection of a portal frame shed. The main issues are:
- i. the effect on the Public Right of Way (Tittesworth Parish No. 5) with particular reference to whether it protects and enhances it in the interests of providing access to open space and recreation; and
 - ii. the effect of the development on the character and appearance of the area.

Public right of way

28. The evidence presented shows a number of different routes for the public right of way, indicating to me that there is uncertainty about the definitive alignment. The Council's evidence shows what is described as a "working line" through the garage of the appeal property that was approved in 2002. In any

case, whilst there is space for walkers to walk along the eastern side of the shed before going east, a better and more direct route shown in evidence has been used for a period of some 20 years, approximately.

29. The Principal Rights of Way Officer has confirmed in his written evidence that subject to a minor change to the proposed new route of the footpath, all of the proposed new route would be on land belonging to the appellant. There is no evidence to the contrary. Furthermore, the Council is supportive of the new route, in principle. It seems to me that it is convenient and there is no evidence of complaints relating to trespass.
30. It is an offence under the Highway Act 1980 to block or obstruct a public footpath and such legislation is outside the scope of this appeal. There has been no action under the Highway Act 1980 against the appellant as a consequence of the erection of the shed the subject of this appeal and in my judgement that is probably because the route that has been walked for many years is unobstructed and has been constantly available for users.
31. The National Planning Policy Framework (the Framework) states that planning decisions should protect and enhance public rights of way and access. The availability of a potentially alternative route would satisfy this particular requirement. Furthermore, case law³ is informative of the approach that should be taken in cases such as this where a building is constructed over a right of way. In that case, an Inspector concluded that the objection was not a material factor in considering the planning merits of the building because the grant of planning permission did not authorise the obstruction of a public right of way. The Inspector concluded that the matter of whether or not a diversion could be achieved should be pursued separately under the Highways Act. The challenge to this approach was dismissed on the grounds that in considering the visual impact on users applied the provisions of the Framework and that there was evidence before the Inspector that there was an equally convenient alternative route. That is comparable to the circumstances before me in the light of the rights of way evidence presented.
32. Matters relating to an alternative route for the public right of way should be pursued under the Highways Act and if that does not succeed then the removal of any obstruction would also be required under that legislation. Consequently, I find that it is not for me to determine under this appeal whether or not an alternative route can be achieved, but rather it is for me to assess the visual impact of the shed on the users of the public right of way.
33. Therefore, I conclude that the development has no harmful effect on the Public Right of Way (Tittesworth Parish No5) with particular reference to whether it protects and enhances it in the interests of providing access to open space and recreation. As such there is no conflict with the Framework which provides that planning decisions should protect and enhance public rights of way and access.

Character and appearance

34. The appeal site is located in the countryside and falls within "other rural areas" according to the Local Plan. However, the local landscape has no specific designation on account of its natural beauty, it is not a valued landscape for the purposes of the Framework and there are only relatively limited views of

³ Malvern Hills District Council v Secretary of State for Housing, Communities and Local Government and another [2021] EWHC 129 (Admin)

the site other than from its immediate vicinity and the adjacent footpath. I observed at the appeal site visit that the local landscape is a working agricultural landscape where buildings such as the shed the subject of this appeal are fairly common. Indeed, there are much larger utilitarian buildings in the local area which provides the landscape context for the appeal site.

35. Policy SS10 states that *"These areas will provide only for development which has an essential need to be located in the countryside, supports rural diversification and sustainability of the rural areas, promotes sustainable tourism or enhances the countryside"*. It is clear to me that this policy applied to all developments, not only larger developments and specifically provides for *"Allowing extensions or additional domestic outbuildings to existing dwellings provided they are appropriate in scale and design and do not have a detrimental impact on the existing dwelling and character of the rural area"*.
36. In the light of Policy SS10, the Council has confirmed that the shed is an outbuilding which serves an existing dwelling and I do not dispute this conclusion. Therefore, compliance or otherwise with SS10 turns on whether the shed is considered to be of an appropriate scale and design and whether or not it has a detrimental impact on the existing dwelling and character of the rural area.
37. The shed is a relatively large portal frame workshop/shed with south facing roller shutter doors which open up onto a bound concrete pad which is surrounded by compacted stone. The external walls of the shed are a combination of concrete with dark green metal cladding above with a metal sheeting pitched roof. The building has a simple functional form but it is not out of place to the rear of the dwelling. I do not consider it to be an incongruous or dominant building but rather a functional large garage which is not unduly visually intrusive in these surroundings.
38. The building is not of an industrial scale or character but, in my judgment, it has the appearance of a large domestic garage/outbuilding which has been designed to meet its immediate residential and rural surroundings without causing visual harm to the character and appearance of the area. There are open views towards the building from the south and from the nearby public right of way, but from more distant views and when approaching it from the footpath it does not dominate the area even though it is in a relatively elevated position. I can see that some additional landscape screening would help to further assimilate the building into its surroundings and that matter may be covered by suitably worded planning conditions.
39. The shed does partly conceal the rear elevation of the host residential property but that may be said for many domestic or similar outbuildings. The visual appearance of the house is not of such quality that needs to be specially protected and consequently I do not find that the shed causes undue harm to the house.
40. There is a further argument relating to a fallback position whereby a shed could be built on the appeal site within the limitations set out under Schedule 2, Part 1, Class E of the GPDO. The appellant contends that this is a material consideration that is in favour of granting planning permission for the shed that has been built. The Council argues that any such fallback building would have to be for a purpose incidental to the enjoyment of the dwellinghouse and would have to be within the curtilage of the dwellinghouse. Therefore, it is their case

that the land in question does not fall within the curtilage of the dwellinghouse and therefore there is no permitted development fallback in this case. As I have concluded earlier in this Decision, the land the subject of the Notice is within the curtilage of the dwellinghouse known as Fox's Croft. Therefore, there is a potential fallback position relating to an outbuilding that may be built as permitted development. However, given my conclusion that the existing shed does not have a harmful effect on the character and appearance of the area, this argument holds little weight in the overall planning balance.

41. Therefore, on this main issue I conclude that the shed does not have a harmful effect on the character and appearance of the area and consequently, is in accordance with Policies SO1, SS1, SS2, SS10, DC1 and DC3 of the Staffordshire Moorlands Local Plan Adopted September 2020 (the LP), the Staffordshire Moorlands District Council Design Guide SPD 21 February 2018 and the Framework.

Conditions

42. Both main parties suggested conditions which were discussed at the Inquiry. I have considered these, and where necessary amended them, in line with national policy and guidance. For the avoidance of any doubt, it is important to reiterate that as a consequence of my decision with respect to the appeal on grounds (b) and (c) this permission relates solely to the portal frame shed and accordingly the conditions can only relate to that part of the alleged breach of planning control the subject of the Enforcement Notice.
43. Firstly, in order to restrict the use of the portal frame shed in the interests of clarifying the purposes for which it may be used I have attached a condition restricting its use to store, repair, maintain and restore vehicles or machines kept for their vintage or collectable value as a hobby or recreational interest and for purposes incidental to the enjoyment of the dwellinghouse.
44. In order to provide additional screening to protect the character and appearance of the area I have imposed conditions relating to hedgerow planting and the implementation of landscaping. Finally, in order to protect access to the countryside I have attached a condition for the provision of an obvious, open and unobstructed route for footpath Tittesworth Parish No. 5 from the roadside.
45. I have carefully considered the additional restrictions suggested by the Council, including limiting the use of power tools and hammers outside of the shed or when the shed doors are open and the use of tools or equipment used inside the shed after 18:00 and before 08:00. However, there is little evidence before me that the use of the portal frame shed gives rise to unacceptable noise levels likely to cause harm to the living conditions of the occupants of nearby residential properties or the countryside, more generally. Limiting the use as set out above is sufficient to control levels of activity and associated noise and disturbance.

Conclusions

46. For the reasons given above I conclude that with respect to the erection of a portal frame shed, the appeal should succeed on ground (a) and planning permission will be granted subject to conditions.

47. For the reasons given above, with respect to the construction of a bound concrete hardstanding and the provision of a hard surface with compacted plainings, the appeal on ground (c) succeeds. Accordingly, with particular reference to that part of the operations, the enforcement notice will be quashed.
48. For the reasons given above, with respect to the change of use on the land to a use for the purposes of keeping, maintaining, repairing and restoring machinery, vehicles and trailers, the appeal on ground (b) succeeds. Accordingly, with particular reference to the use, the enforcement notice will be quashed.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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She called

Mr Eric Fox

Appellant

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Julie Fox

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