



Appeal Decision

Site visit made on 7 February 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Appeal Ref: APP/W0340/C/22/3294032

Land North of Mudhall Cottage Winterbourne Road, Boxford, Newbury, RG20 8AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Davies against an enforcement notice issued by West Berkshire District Council.
 - The notice was issued on 26 January 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 use to a mixed use comprising;
 - a. Agriculture; and
 - b. Leisure/recreational use and associated development consisting of the erection of x2 gazebos and paraphernalia, metal storage container and x2 play swings and frame used in connection with the leisure/recreational use of the land;Without planning permission, the operational development comprising;
 - a. Erection of 2x Gazebos and metal storage container.
 - The requirements of the notice are: a) Cease the use of the Land for leisure/recreational purposes, including the storage and siting of the associated paraphernalia listed in in para b) below; and b) Remove from the Land the following: The Metal Storage Container and x2 Gazebos; and The associated leisure/recreational paraphernalia; paving slabs and ceramic pots, children's goal posts and nets, dining table & chairs, x2 children's play swings and frame, children's swing ball, children's toy house, BBQ and all other items related to the unauthorised leisure/recreational use.
 - The period for compliance with the requirements is: 2months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed insofar as it relates to the metal storage container 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 metal storage container on land north of Mudhall Cottage, Winterbourne Road, Boxford, Newbury, RG20 8AY subject to the following condition:

1) the permission hereby granted shall be for a temporary period of three years from the date of this decision. At the end of that period the metal storage container shall be removed from the site.

Otherwise the appeal is dismissed and the enforcement notice is upheld and planning permission is refused for any other elements of the matters alleged.

The Appeal on Ground (c)

2. This ground is that the matters alleged have not happened. The appellant argues the land is actually in the process of being developed as an organic farm. The storage container is mobile and will be moved around the site as necessary. It is used for storing agricultural equipment. In any event it is only a temporary use as planning permission exists for a barn on the site and once completed that will be used for storage. The two gazebos are actually field shelters. One is a typical temporary shelter held down by pegs, the other is permanent, but is used for sheltering animals. It is accepted that requires planning permission but is dealt with through the ground (a).
3. It is also accepted the appellant's children come onto the land from time to time, hence the swings and ride-on toys, and there is the occasional family BBQ, but these are infrequent and either de minimis, genuinely incidental to the agricultural use or covered by the 28 day allowance in the GPDO. The paving slabs are not there to create a patio but as dry weather flooring for chickens and ostriches.
4. As I saw on site, the land is mostly rough grazing, although no animals were present. All the chickens had apparently been taken by foxes and no other animals were visible. There is a small corner that has been planted as an orchard, with about 40 trees, and 3 beehives. The chicken run was empty, and I could not see inside the container as it was locked, however, the Council photographs showed it was used for storing equipment used to maintain the site.
5. The site lies on a noticeable rise, and there is a gentle slope to a raised central section that contains the two gazebos. The first is clearly a temporary, movable structure, although judging from the photographs it does not seem to have been moved in the last year or so. Beneath it is a picnic bench. The second larger gazebo stand nearby and consists of an 'L' shaped roof supported on wooden posts. It has no sides and would provide very little shelter for animals, if there were any. What is noticeable is that both gazebos are set on the highest point of the site and command sweeping views in several directions, across the countryside. It is not the location I would have chosen for an animal shelter being the most exposed part of the site.
6. The Council's photographs in April 2021 show the whole site appears to be closely mown with a considerable amount of children's toys and domestic paraphernalia scattered about the central section around the gazebos. In July much of the grass has been allowed to grow, with wide paths cut through to the gazebos and round the container. By September it was looking more overgrown, although the grass around the gazebos was still cut, but some of the swings and ride-on toys were getting lost in the grass. This was very much the situation as I saw it. Many of the toys had been cleared away as had one of the sets of swings.
7. However, apart from a few chickens and the small orchard, in none of the photographs or on my visit was there any evidence of any agricultural activity. The site of the barn is no more than a rectangle that has been levelled, with a pile of hardcore in the middle. Eleven months ago, it was suggested the barn was under construction and, if the appeal failed, an extension of time to 12 months should be granted to allow that to happen, but clearly nothing has

happened in the meantime and the term 'under construction' is a generous description of what has happened so far.

8. The only activity that does seem to have taken place on the land so far is the leisure use. The two gazebos are clearly not designed as animal shelters but for leisure purposes and no works to complete the barn, which might indicate an intention towards an agricultural use, have taken place. There is a lack of hard evidence either way in this case, but what there is, suggests to me that on the balance of probability, the allegation is correct and that a mixed has been created. The appeal on ground (c) fails.

The Appeal on Ground (a)

9. This appeal is for the fixed wooden gazebo only. As I have argued above I do not believe this is used for agricultural purposes. Given its location and design it is difficult to see what possible use it could have other than for leisure. There is no argument that it is acceptable as a domestic gazebo. It is on the most exposed part of the site and would be clearly visible from all around. There is no evidence of any animals on site, and if they were they would need a proper shelter anyway, so the appeal on ground (a) fails.
10. It was argued that the shipping container is a movable structure and so does not require planning permission. It is true that by its very nature a container can be moved, but when it has ceased to be a shipping container but is now being used as sedentary storage unit different criteria come into play. While it is not fixed to the ground, the question is whether it would ever be moved or is it intended to be permanent? There is no reason to move it around the site, it sits in the obvious place by the entrance, and there is no evidence it has ever been moved. In my view therefore it is a permanent structure and I shall deal with it below.

The Appeal on Ground (f)

11. The site, whatever its use, does require maintenance and upkeep and if the appellant is going to develop a bee keeping hobby he will need equipment for that as well. Consequently, there is a need for the container as no other covered storage is available on site. The appellant says it is a temporary use only, until the barn is built. That seems reasonable to me. However, there are no agricultural uses for the two gazebos, the paving slabs, BBQs, ceramic pots or the children's play equipment.

The Appeal on Ground (g)

12. There is no sign of work to the barn, so extending the compliance period to 12 months would not appear to achieve anything.

Conclusions

13. However, the container, which is an eyesore but is temporarily necessary, needs to be catered for. Were I to remove it from the requirements then it would be granted planning permission by virtue of s173(11). That would make it a permanent fixture. Given the appellant has DEFRA licence and CPH number I assume he does intend to press forward with the organic farm at some point, and this will require completion of the barn. I shall therefore grant planning permission on ground (a) for the container for a temporary period of 3 years to enable the barn to be completed and the need for the container to

come to a close. Although the container was not included in the ground (a), it was suggested it was required only temporarily so this course of action should not prejudice the appellant nor come as a surprise.

14. I shall uphold the notice but allow the ground (a) insofar as it relates to the shipping container subject to a temporary condition. This will override the element of the requirements that relates to the container.

Simon Hand

INSPECTOR