



Appeal Decision

Hearing held on 28 March 2023

Site visit made on 27 March 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/M9496/C/22/33307456

Land known as The Hut, Wilshaw Bottom, Hollinsclough, SK17 0RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
- The appeal is made by Mr Darren Allcock against an enforcement notice issued by the Peak District National Park Authority (“the Authority”).
- The enforcement notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is:
 - A. Carrying out building operations namely the construction of a timber cabin (hereafter referred to as “the building”) and associated structures, without the required planning permission, on the site.
 - B. Carrying out building engineering or other operations in or on the site namely the formation of a hard surfaced access and parking area in the approximate positions shown (a) hatched and (b) brown on the plan; the laying of water service pipes in the approximate position shown marked A shown on the plan; the installation of septic tank drainage in the approximate position shown marked B on the plan and the formation of an access track in the approximate position shown marked D-E on the plan.
 - C. The making of a material change in the use of any buildings on the site, or in the use of the site itself from agricultural use to use for residential purposes.
- The requirements of the notice are:
 - a) Remove the timber cabin and associated structures in particular, decking, bin storage, ancillary shed and solar panels, as well as moveable items such as barbecues, garden furniture and other domestic paraphernalia from the site.
 - b) Remove the materials used in its erection or construction from the site.
 - c) Remove the hard standing; the water service pipes in the approximate position shown marked A shown on the plan, the septic tank drainage shown in the approximate position marked B on the plan and the access track from the site and make good the surface of the site (and making good any connections disturbed).
 - d) Cease the use of the timber cabin for residential purposes.
- The period for compliance with requirements (a), (b) and (c) is 4 months, and for requirement (d) 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(c) (d), (f) and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Application for Costs

1. An application for an award of costs was made by the Authority against the appellant. This is subject of a separate Decision.

The Enforcement Notice

2. There are some typos, grammatical errors and minor misdescriptions in the alleged breach and requirements at Sections 3 and 5 of the notice which I raised with the parties at the start of the Hearing. None of these had affected the appellant's interpretation of the notice, nor his arguments that there were no breaches of planning control, or that any breaches were immune from enforcement action due to the passage of time. His case relying essentially on the use of the land for holiday accommodation for many years. As such, I am satisfied that correcting the notice, as agreed with the parties, using powers available to me under section 176(1) of the Act, would not result in injustice to any party.
3. I viewed the site externally the day before the Hearing. Since the key issues relate to historical use, matters of fact, and to the law, it was unnecessary for me to carry out a further visit.

Appeal on ground (c)

4. "Development" is defined¹ to include the carrying out of building (and rebuilding), engineering, mining or other operations, and also the making of a material change in the use of any buildings or land. The carrying out of development without the required planning permission constitutes a breach of planning control (s171A).
5. The appeal on ground (c) argues that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to an appellant and the test of the evidence is on the balance of probabilities.
6. Turning first to the elements of operational development of the alleged breach, in parts A and B of Section 3 in the notice (as corrected), the appellant confirmed that after he purchased the site in 2019 he removed an older dilapidated timber building that had been present on the site for many years. The timber cabin now on the appeal site is a replacement for the older one. The smaller shed and all other operational development listed in parts A and B were also carried out by the appellant following his purchase of the land.
7. It is clear to me that none of the operational development carried out is excluded from the definition of development at s55 of the Act and no argument was made that it was so, either in written submissions or at the Hearing. Additionally, despite the appellant's initial claim² that the development was "permitted development"³, no evidence was submitted to substantiate that assertion. In my own assessment, having regard to the provisions of the GPDO, none of the development carried out is permitted development.
8. Since all of the elements of the breach in parts A and B comprise development for which planning permission is required, but which has not been granted, it therefore constitutes a breach of planning control. The appeal on ground (c) in respect of these matters therefore fails.

¹ Section 55(1) and (1A) of the Act

² Facts and grounds submitted with the initial appeal form

³ Development that benefits from planning permission via the Town and Country Planning (General Permitted Development) (England) Order 2015 - "the GPDO"

9. I turn next to the alleged material change of use of the land to use for residential purposes.
10. As set out in PPG⁴ there is no statutory definition of a “material change of use”. However, it is linked to the significance of a change and the resulting impact on the use of land and/or buildings. Whether a material change of use has taken place is a matter of fact and degree to be determined on the facts and circumstances in any particular case. Critically, a material change of use incorporates a significant difference in the character of activity from what has taken place previously.
11. In comparing previous and current activities, for the purposes of assessing whether a material change of use has taken place, it is also necessary to determine the appropriate planning unit at the relevant point in time. In long established case law in *Burdle*⁵ it was held that the planning unit should be determined with regard to the unit of occupation.
12. It is clear, from both the Authority’s and the appellant’s evidence, that the rectangular parcel of land comprising the appeal site (as shown by the red line on the plan attached to the notice) is the relevant planning unit to be considered. The whole of this unit has been laid out, physically developed and then used for the purpose of residential use (holiday accommodation).
13. However, only a much smaller part⁶ of the appeal site was previously occupied and used for the same residential purpose before 2019. Adjoining land, that had only been in agricultural use, was also purchased by the appellant to “square off” the site, thereby forming the current (much larger) planning unit. As a new planning unit, incorporating land formerly used for agriculture, it amounts to a material change of use of the land within the unit, and thereby is “development” within the meaning of s55(1) of the Act.
14. Since the development has been carried out without the required planning permission it constitutes a breach of planning control.
15. The appeal on ground (c) fails.

Appeal on ground (d)

16. An appeal on ground (d) is that at the date the notice was issued the development was immune from enforcement action due to the passage of time. The burden of proof, tested on the balance of probability, falls to the appellant.
17. There is some local evidence⁷ of a holiday chalet being present on the appeal site, potentially from 1937 onwards, with it being replaced in the 1960’s. Presumably, it may have been that 1960’s replacement that was removed and replaced again in 2019 by the appellant.
18. Although not specifically articulated by him in argument, and while the evidence is not conclusive of continuous use up to 2019, I queried with the appellant’s agent whether his evidence amounted to an argument that the use of the land was lawful by virtue of s57(7) and Schedule 4 of the Act which makes special provision for uses that existed on 1 July 1948. However, given

⁴ Planning Practice Guidance: Paragraph: 011 Reference ID: 13-011-20140306

⁵ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

⁶ This was referred to as the triangular parcel of land that had previously existed

⁷ Provided in letters from local people and the Parish Council

the more recent history of the site I conclude that the use could not be lawful under these provisions of the Act since, even if there had been such a lawful use, it would have been extinguished by the creation of the new planning unit as I previously described.

19. Given that the residential use of the new planning unit commenced in 2019, hence less than 10 years before the notice was issued, it is not immune from enforcement action having regard to the time limits at s171B(3) of the Act.
20. For these reasons the appeal on ground (d) fails.

Appeal on ground (f)

21. The Act states two purposes the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Hence, an appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to achieve either of those purposes.
22. In this regard the notice requires the use of the land for residential purposes to cease, and the removal of all buildings, structures, hard-surfaced areas, water pipes and septic tank drainage. In other words, it simply requires the appellant to undo all that he has done by returning the land to the condition it was in prior to the breach taking place. It is clear therefore that the purpose of the notice is to fully remedy the breach of planning control (s173(4)(a)).
23. It was suggested that the hardstanding could remain as it could be used for agricultural purposes. However, there is no convincing evidence before me that it would be so used and, moreover, its retention would not fully remedy the breach of planning control.
24. In light of the purpose of the notice it is clear that the requirements cannot be excessive - because they go no further than remedying the breach. Any lesser requirements, such as those suggested by the appellant, would not fully remedy the breach.
25. The appeal on ground (f) therefore fails.

Appeal on ground (g)

26. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires the residential use to cease within 1 month and all other requirements within 4 months.
27. The appellant initially sought a period of 1 year, and at the hearing suggested shorter periods of time.
28. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. However, I acknowledge that securing and scheduling contractors and completing the remedial works may take longer than 4 months. I also heard that 1 month would be inadequate in terms of cancelling holiday bookings that now extend well into the rest of the year.

29. In light of all the circumstances I consider on balance that 2 months to cease the use of the land, and a further 3 months for completion of remedial works, hence 5 months in total, would be more reasonable.
30. The appeal on ground (g) succeeds to this limited extent and I will vary the notice accordingly.

Formal Decision

31. It is directed that the notice be corrected and varied by:

- in Section 3 deleting all of parts A, B and C and inserting instead the following words:

Without planning permission:

- A. Erection of a timber cabin with attached solar panels, decking and a shed.
 - B. The creation of a hard surfaced access and parking area in the approximate positions shown hatched and brown on the plan; the laying of water service pipes shown in the approximate position marked A on the plan; and the installation of septic tank drainage in the approximate position marked B on the plan.
 - C. The making of a material change in the use of the land to use for residential purposes.
- in Section 5 deleting all the words therein and inserting instead the following words:
 - a) Cease the use of the land for residential purposes.
TIME FOR COMPLIANCE: 2 MONTHS
 - b) Remove the timber cabin with solar panels, decking, shed, bins, barbecues, garden furniture, and all other domestic paraphernalia from the land, and remove all resulting debris and materials arising from compliance.
TIME FOR COMPLIANCE: 5 MONTHS
 - c) Restore the land to its former condition by removing the hard surfaced access and parking areas, the water service pipes and septic tank drainage.
TIME FOR COMPLIANCE: 5 MONTHS

32. Subject to the corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Humphries, RIBA	Agent
Darren Allcock	Appellant

FOR THE AUTHORITY:

Tom Shiels	Senior Monitoring and Enforcement Officer
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DOCUMENTS SUBMITTED AT THE HEARING

DOC 1 Statement of Case for the Appellant