
Appeal Decision

Site visit made on 19 June 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/N3020/C/22/3306064

Land at Ramper Covert Wood, Mansfield Road, Arnold NG5 8PH

- 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 Stuart Mills against an enforcement notice issued by Gedling Borough Council.
- The enforcement notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a wedding venue with associated erection of 2no. joined tipi tents, erection of a stage with canopy and siting of a WC trailer and trailer mounted cabin.
- The requirements of the notice are:
 - i) Cease use of the land as a wedding venue.
 - ii) Remove from the land the 2no. joined tipi tents and all associated lighting and fitments.
 - iii) Remove from the land the trailer mounted cabin and associated trailer and step.
 - iv) Remove from the land the WC trailer and associated steps, signage and lighting.
 - v) Remove from the land the wooden stage and associated canopy and lighting.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Decision

1. It is directed that the enforcement notice be corrected by:
 - Inserting the wording "mixed use as forestry and a" after the words "the material change of use of the land to a" in paragraph 3 of the notice;and varied by:
 - Deleting Step (iv) from paragraph 5;
 - Renumbering (v) to (iv) in paragraph 5.
2. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

3. The appellant contends that it was not expedient for the Council to take enforcement action. Furthermore, he considers that the plan attached to the

- notice is misleading, stating that it is not to scale and the items identified on the plan are not accurately represented in terms of size and position.
4. It is established case law that any challenge as to whether it was 'expedient' for the local planning authority to issue an enforcement notice must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the local planning authority complied with S172 of the Town and Country Planning Act, 1990, as amended (the Act). This is not therefore a matter for my consideration in this appeal.
 5. S173(1)(a) of the Act requires an enforcement notice to specify the matters which appear to the local planning authority to constitute the breach of planning control. S173(2) says that an enforcement notice complies with S173(1)(a) if it '*enables any person on whom a copy of it is served to know what those matters are*'. Furthermore, Part 2 Regulation 4(c) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 states that an enforcement notice issued under S172 of the Act shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
 6. The alleged breach of planning control in this case is set out in paragraph 3 of the notice. It clearly states that the breach of planning control is the material change of use of the Land to a wedding venue and identifies the erection of 2 no. joined tipi tents, a stage with canopy and siting of a WC trailer and trailer mounted cabin as items which have been sited on the Land and associated with that unauthorised use. A plan has been attached to the notice which clearly identifies that Land to which the notice relates and identifies the approximate location of the tipis, WC trailer, trailer mounted cabin and stage. There is no requirement for the plan to be to a recognised scale, only for the precise boundaries of the Land to be identified. From the evidence before me, including observations on my site visit, the plan clearly identifies the boundaries of the Land to which the notice refers. The annotation of the plan seeks to assist the appellant to identify the items which facilitate the use and are required to be removed from the Land. Considering the contents of the appellant's statement, and his occupation of the Land, the appellant clearly understands what the notice and plan is specifying and requiring him to do. Furthermore, although the Council may have incorrectly calculated the size of the site in their Statement of Case, the plan attached to the notice clearly identifies the boundaries of the Land to which the notice relates.
 7. The breach of planning control alleged is a material change of use of the Land to a wedding venue with associated erection of 2 no. joined tipi tents, erection of a stage with canopy and siting of a WC trailer and trailer mounted cabin. The Land forms a single planning unit, the lawful use of which is forestry. From the evidence before me, and observations on my site visit, that forestry use has not been wholly displaced by the use of the site as a wedding venue but continues alongside it. The breach of planning control is therefore a material change of use of the Land to a mixed use as forestry and as a wedding venue. I shall therefore correct the alleged breach to specify that mixed use. The Council and Appellant have had an opportunity to comment on the correction. I am satisfied that the correction would not result in injustice to either party, as the purpose of the notice, including its requirements, are not affected by the correction.

Appeal on ground (c)

8. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. On this legal ground of appeal, the onus of proof is on the appellant to make his case and the test is on the balance of probability.
9. The use of any Land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of (a) the holding of a market; (b) motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use, is permitted by Class B, Part 4, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015, as amended (the GPDO) subject to conditions at B.1.
10. There is no dispute between the parties that weddings occurred on the Land on no more than 28 days in 2022 when the notice was issued. However, the tipis erected, the stage with canopy, WC trailer and trailer mounted cabin remained on the Land and were not removed between each event. The appellant does not consider that under the provisions of the GPDO he is required to remove those items between events, it is only the use of the land for weddings that must not take place for more than 28 days in total in any calendar year. On the other hand, the Council consider that to benefit from planning permission granted under Part 4 of the GPDO, the Land needs to revert back to its normal use after each occasion of temporary use, with the 28 days use being exceptional. The Council have directed me to a 2002 judgement in the Court of Appeal in *Ramsey & Ramsey v Secretary of State for the Environment and Suffolk Coast District* [2002] EWQCA Civ 118 (Ramsey) and an Inspector's decision, dated 2006 which they consider relevant¹. I have had regard to the judgement and decision in my determination of the appeal.
11. At the time of my site visit the tipis and stage had been dismantled and were not on the Land. However, the WC trailer and the trailer mounted cabin have been retained on the Land, and I was able to see the clearing where tipis and stage had been sited. I was also able to view the woodland as a whole, including a signed woodland walk which I understand is available for guests to explore during events. Although the tipis and stage have been dismantled, the evidence includes many photographs of these structures, and it is not disputed that they remained on the Land between wedding events.
12. The Ramsey Judgment and 2006 Inspector's decision distinguish land where a temporary use occurs under Class B, Part 4 of the GPDO as having a normal use, with the 28 day use being exceptional. The Ramsey Judgement identified the critical tests for determining whether a use is exceptional as duration and reversion. The reversion test refers to the resumption of the normal use during the period when the temporary use has ceased.
13. As was the case in the 2006 appeal, the normal use in this appeal case is said to be forestry. The appellant states that maintenance of the woodland

¹ APP/R3705//05/2003896

continues throughout the year, and includes management works, grubbing out invasive Rhododendrum and cutting deadwood, stacking it to create invertebrate habitats or to dry out in the log store for sale in the winter/autumn. The alleged use, as corrected, is a mixed use as forestry and as a wedding venue. For the appeal to succeed on ground (c) the wedding use must be "exceptional" and confined to the 28 days when the event occurs rather than having a greater presence such that it is part of a mixed use.

14. The 2no. joined tipis are substantial in size. The Council's photographs² show their canvas roof supported by large timber poles and scaffold. There is flooring within the tipis, bench tables and seating. The stage, which is distinguishable from the tarpaulin covered log store, is constructed from timber with a raised floor, open sides and a canvas canopy to create a roof covering and backdrop. Although the appellant considers the stage to also be an area where logs are stored, there is no evidence to support that assertion. From the evidence before me these structures are not part of the forestry use.
15. I was able to view the trailer mounted cabin on my site visit. The appellant contends that this cabin is used to store tools. However, at the time of my visit there were no tools stored within it, only a raised timber sleeping platform and a chest of drawers. Furthermore, the Council has provided evidence that the cabin has been designed and constructed by the site operator with a purpose to provide sleeping accommodation within the woodland³ associated with the wedding venue use.
16. The WC trailer also remains on the site. It provides toilet cubicles for male and female use. Although it is accepted that for some events additional toilet facilities are brought onto the Land, the operator's evidence is that the WC trailer unit retained on the site is also utilised for events. However, I accept that it may also be used in association with the management of the forest.
17. Except for the WC trailer, on the balance of probability, the tipis, stage and trailer mounted cabin are not part of the normal forestry use of the Land. The scale and physical presence of those structures are such that, considering the passive character of the forestry use, that normal forestry use does not fully displace the wedding venue use when it is not in operation.
18. My conclusion is that the wedding venue use is not "exceptional" and confined to the 28 days when the event occurs. On the balance of probability, a material change of use of the Land to a mixed use of forestry and use as a wedding venue with associated erection of 2no. joined tipi tents, erection of a stage with canopy and siting of a WC trailer and trailer mounted cabin took place for which no planning permission was granted by the local planning authority. This development is not permitted under the provisions of the GPDO and a breach of planning control has occurred. The appeal on ground (c) fails.

Appeal on ground (f)

19. The issue is whether the requirements are excessive to achieve the purpose of the notice.
20. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to

² LPA Statement of Case, Appendix 5

³ LPA Statement of Case, Appendix 7.

remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.

21. A substantial part of the appellant's case relates to the reasons for issuing the notice and its alleged harm, including citing economic and environmental benefits of the unauthorised development. However, in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f) and the notice cannot therefore be varied to attack its substance. Furthermore, upholding the notice will not preclude taking up permissions available under the GPDO.
22. It is also the appellant's case that the stage, siting of WC trailer and trailer mounted cabin are all moveable structures which are also required for the lawful forestry use of the Land. It is therefore excessive to require those structures to be removed. In addition, the lighting, fittings, steps and signage which are required to be removed are not included in the alleged breach.
23. It can be seen from my reasoning in ground (c), that I found the tipis, stage and trailer mounted cabin are not part of the normal forestry use of the Land. Those structures have been placed on the Land to facilitate its unauthorised use as a wedding venue, and it is not therefore excessive to require their removal to achieve the statutory purpose of the notice. The lighting, fittings and signage which are associated with those structures also facilitate the unauthorised use. I am not aware that those lights, etc have been installed for any lawful purpose and the requirement to remove them is not excessive.
24. However, I accept that on the balance of probability, the WC trailer is utilised by forestry workers. It is a moveable structure incidental to the forestry use. Considering the lawful use of the Land as forestry, it is therefore excessive to require the removal of this structure. I shall vary the requirements of the notice to that effect. The appeal on ground (f) succeeds to that limited extent.

Other Matters

25. I have had regard to the draft Section 106 agreement under the Act which has been submitted for consideration as part of the appeal. However, such an agreement, even if it was a signed document, cannot be used to negate the requirement for planning consent. I therefore give this consideration little weight.
26. I am aware that the appellant has an appeal under s78 of the Act currently under consideration by the Planning Inspectorate⁴. However, in the event that the appeal is allowed, and planning permission granted, S180 of the Act provides that *"Where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of planning permission, the notice shall cease to have effect so far as inconsistent with that permission."*

Human Rights

27. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law the most fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would

⁴ APP/N3020/W/22/3297151

interfere with Article 1 of the First Protocol. However, given the harm identified in the notice and taking into account the variation to the notice to allow the WC trailer to remain, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a correction and variation.

Elizabeth Pleasant

INSPECTOR