



Appeal Decision

Site visit made on 5 June 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/D3505/C/22/3302813

Land east of Brambles, Rockalls Road, Polstead, Suffolk, CO6 5AS

- 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 Ms Julia McKay against an enforcement notice issued by Babergh District Council.
 - The enforcement notice, numbered ENF/21/00026, was issued on 10 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for the siting of two cabin structures, in the approximate location edged in blue on the attached plan.
 - The requirements of the notice are to remove the structures and any associated bases and remove any and all materials and debris arising from the removal of the structures and the associated bases.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) 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 as amended have lapsed.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. Development, as set out in section 55 of the ACT, comprises two limbs; the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change of use in the use of any buildings or other land. The construction of a building is generally held to constitute operational development rather than a use of land. Section 336 of the Act defines a building as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. There are three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive.
3. From the site visit, the cabins have been sited with several other timber buildings within a modest clearing in woodland. Both cabins appear to be of sectional construction, that according to the appellant's evidence, arrived flat packed in 2019 and were put together during 2020. Due to the significant slope of the land, the cabins have been sited on breeze block pillars that stand on concrete pads.

4. To the front of both buildings a timber terrace has been constructed, connecting the various buildings, with two sets of steps leading down to ground level. There were a number of smaller roofs connecting the various buildings and spanning the gaps between them, creating additional enclosed spaces. These both visually and physically connect them together.
5. The cabins are substantial in size and appear as permanent structures. Moreover, I have nothing to suggest that there is an intention that either cabin has been, or is likely to be moved. From the evidence provided by the parties, it appears the structures have been in situ since 2020 and so have the quality of permanence. I have nothing to suggest that the appeal development has been designed in such a way that would allow them to retain their structural integrity, if they were moved either by lifting or towing. Accordingly, as a matter of fact and degree, I find that the cabins are buildings for the purposes of the Act.
6. An enforcement notice should be drafted in such a way as to tell the recipient fairly what they have done and what they need to do to remedy it. In this case the enforcement notice alleges that a material change of use has taken place as a result of the siting of two cabin structures. However, the siting of the two cabins are not in themselves, a use of the land.
7. It is apparent that the cabins have been sited in an area of woodland and the appellant made a reference to them being used in connection with a meditation and wellbeing use. I saw that one of the cabins had a double bed with some kitchen accessories and a barbeque. The other had various seating and large floor cushions. Close to the buildings there was a small touring caravan, which alongside the largest cabin is used for overnight stays and staff facilities.
8. The enforcement notice allegation gives no indication of the lawful use of the land, the exact nature of the unauthorised use it seeks to target, or the extent of that unauthorised use within this substantial site. Moreover, the requirements set out in paragraph 4 of the notice do not require any unauthorised use to cease.
9. My attention has been drawn to an outstanding application (DC/22/03466), an application for a Lawful Development Certificate for an Existing Use, Operation or Activity. The application is for the use of woodland as a wellness centre retreat and the siting of cabins. I understand from the Council that this application is on hold pending the outcome of this appeal. However, I have no further details about this application, or the supporting evidence that has been supplied by the applicant.
10. The powers transferred to Inspectors in Enforcement appeals include the power to correct any defect, error or misdescription in the notice under s176(1)(a) and/or vary the terms of the notice, where the Inspector is satisfied that doing so will cause no injustice to the appellant, or the Council. Alternatively, the power to quash the notice.
11. Whether or not the appellant is able to show that the buildings were substantially completed at least four years prior to the service of the enforcement notice, it is not clear how they have been used and when any such use first took place. Whilst by virtue of section 171B(1) of the Act, the immunity period for operational development is 4 years, the immunity period for the use will depend upon how it has been used.

12. I acknowledge that my concerns about the notice are compounded by what I saw, appearing to indicate that operational development has occurred in addition to any change in the use.
13. The Council issued the notice on the basis that a material change of use has occurred and has advanced its case on the basis that the immunity period is 10 years, not 4 years. Moreover, it is clear from the Council's evidence that it is concerned with both the presence and use of the cabins, and this is reflected in its reasons for taking enforcement action. This also seems to be supported by the Council's approach to the more recent certificate application, that seeks to demonstrate the lawfulness of the wellness centre retreat and the associated cabins.
14. Drawing the above points together, if I was to correct the notice to refer to just operational development, then this would cause injustice to the Council and also affect the way the appellant could have constructed her case. In contrast, were I to correct the notice to refer to the meditation and wellbeing use, I would also need to introduce a requirement for that use to cease. This would widen the scope of the enforcement notice and make it more onerous to comply with, which would cause the appellant injustice. Moreover, I cannot be certain of the exact nature of the use and whether it forms part of a wider mixed use.
15. Consequently, and whilst I acknowledge that the Council may be able to issue another notice, I shall quash the enforcement notice as inaccurate and incapable of correction without injustice to either the appellant, or the Council.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity, the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
17. I would draw the appellant's attention to the provisions under s171B(4) which allows the Council to issue another notice. In these circumstances, the appeals on the grounds set out in section 174(2) (c), (d) and (f) of the 1990 Act as amended do not fall to be considered.

Hilary Orr

INSPECTOR