



Appeal Decisions

Site visit made on 27 September 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal A Ref: APP/V3310/C/23/3318060

Appeal B Ref: APP/V3310/C/23/3318061

Land at Holly Tree Cottage, Sparrow Hill Way, Weare, Axbridge BS26 2LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Mark Seagrove (Appeal A) and Mrs D Seagrove (Appeal B) against an enforcement notice issued by Sedgemoor District Council.
- The notice was issued on 8 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the use of land for non-agricultural purposes including the siting of shipping containers, storage of vehicles, domestic paraphernalia, waste, building materials, rubble and plant, and the use of land for non-residential purposes for the dismantling and storage of vehicles and associated materials and equipment in the approximate area edged red on the attached plan.
- The requirements of the notice are to:
 1. Cease the unauthorised use of the land (area B) shown in blue on the attached plan edged in red for non-agricultural purposes including the removal of all vehicles not used for the purpose of agriculture, all vehicle parts, domestic paraphernalia, storage containers, building material, rubble and plant (including any sewerage/waste/treatment containers).
 2. Cease the unauthorised use of the land (area A) as shown in green on the attached plan edged in red for non-residential purposes including the storage and dismantling of vehicles including the removal of all vehicles and parts thereof, tools, equipment and all other materials brought onto the land in connection with the unauthorised use.
- The period for compliance with the requirements is 5 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals succeeds in part only and the enforcement notice is upheld with correction, and variation in the terms, including the period for compliance, as set out below in the Formal Decision.

The Notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council.
2. The notice identifies the breach as consisting of the unauthorised use of one area of the land for non-agricultural purposes, and of another area of the land for non-residential purposes. The two areas of the land are specified in the requirements and the attached plan. Notwithstanding this, precision and clarity would be improved if the two areas were also specified in the description of what constitutes the breach.

3. The Council appeal statement clarifies that the alleged change of use in both areas of the land is to a mixed use. The description of what constitutes the breach would be clearer and more precise if the mixed uses were specified. These corrections can be made without fundamentally changing the notice or its requirements, or causing injustice, and are set out below in the formal decision.

Preliminary Matters

4. The site that is the subject of these enforcement appeals comprises a dwelling known as Holly Tree Cottage, its garden and a field to the rear. The Council has identified 2 planning units. The dwelling and its garden form one planning unit with a lawful C3 Dwelling House use (as set out in the Town and Country Planning Use Classes Order 1987, as amended). This is identified on the plan attached to the notice as area A (coloured in green). The field to the rear, which is not physically separated from the garden, forms another planning unit with a lawful agricultural use. This is identified on the plan attached to the notice as area B (coloured in blue). The appellants have not contested the identified planning units and I have no evidence which would lead me to conclude any differently. I have therefore considered the appeals on this basis.
5. I note comments from the appellants in response to third party representations. My assessment of the items located on site and the use of the land has been made on the basis of all submitted evidence and a full site visit, which included access to the storage containers.

'Hidden' Ground (c)

6. The appellants have not appealed on ground (c), which is that the matters stated in the notice do not constitute a breach of planning control. However, in their submissions the appellants have stated that some of the items on the land are there in association with the lawful use of the land and so are not a breach of planning control. I have considered this as a hidden ground (c) appeal.
7. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant. In this case, the appellant would need to demonstrate that all uses of the garden (area A) were associated with the lawful residential use and all uses of the field (area B) were associated with the lawful agricultural use, and hence do not constitute a breach of planning control.
8. Regarding area A, during my site visit I observed 13 vehicles in the garden area either side of the dwelling, in various states of repair, many of which did not appear to be roadworthy or in regular use. This number of vehicles exceeds what could be considered to be part of the normal everyday residential use of the dwelling. Therefore, on the evidence before me, I consider that a change of use has taken place in area A from the lawful use as a residential dwelling (Class C3 Dwelling Houses,) to a mixed use of dwelling (Class C3) and storage of vehicles and vehicle parts (Class B8 Storage and Distribution). There is no planning permission for this change of use and no relevant permitted development rights. The vehicles are highly visible from the road and are an unattractive and incongruous feature within the streetscene. Therefore, an unauthorised material change of use has taken place in area A, which constitutes a breach of planning control.

9. Regarding area B, during my site visit I was able to look inside the 2 storage containers. One contained car tyres and domestic items (bicycles, toys etc). The second contained car parts and body panels, general storage and a small selection of tools (strimmer, mower, rake etc). The storage containers were not used primarily to store items necessary for agriculture so cannot be said to be used in association with the lawful agricultural use of the land. Neither did the containers hold items which are directly associated with any ongoing development works at the dwelling, so cannot benefit from permitted development¹ rights for temporary buildings and uses.
10. There was no evidence of agricultural use at the time of my site visit, but the appellant states that cattle graze in the field at least twice a year. Functional farm vehicles, such as a tractor, would be considered to be in association with the lawful use of the field, if used to enable the maintenance of the land. A water container used to water apple trees can also be considered part of an agricultural use. The notice could not, and does not attempt to, prohibit lawful uses of the land, so any vehicle and items genuinely in agricultural use would not be required by the notice to be removed.
11. Other items within the field, including a partially dismantled car, flatbed truck and various trailers, cabs and items of scrap, cannot be considered to be part of an agricultural use. These non-agricultural items are evidently being stored on the land. The storage of commercial vehicles and building materials associated with the appellants work as a builder/developer would not be a lawful use of area B (or area A).
12. The appellants say that a pile of wood in area B is for use in their domestic wood burner and that the football goals were moved to their current location to allow the grass to be cut. Both of these items are associated with the residential use and not an agricultural use. Hence, they would be lawful in association with the residential use in area A, but use of area B as a garden and to store residential items is a change of use.
13. Therefore, on the evidence before me, I consider that a change of use has taken place in area B, from the lawful use for agriculture, to a mixed use of agriculture, storage (Class B8) and residential garden (Class C3). There is no planning permission for this change of use and permitted development rights are not applicable. Notwithstanding that neighbours may have chosen to remove boundary trees within their gardens, the storage containers and other items associated with the change of use are highly visible from neighbouring dwellings as well as from adjoining fields and are unattractive and incongruous features within the landscape. Therefore, an unauthorised material change of use has taken place in area B, which constitutes a breach of planning control.
14. I conclude that the appellants have not provided substantive evidence that on the balance of probability, there has been no breach of planning control. Accordingly, the appeal on hidden ground (c) fails.

The Appeals on Ground(f)

15. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury

¹ Part 4 -Temporary buildings and uses, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as Amended).

to amenity which has been caused by any such breach. The purpose of the notice in this case is to remedy the breach of planning control.

16. In appealing on ground (f) the appellants have stated that some of the items on the land are there in association with the lawful use of the land. This has been considered under hidden ground (c) above. However, the appellants have not provided any information on any lesser steps which might remedy the identified breach of planning control. There is no obvious alternative to remedy the breach other than as required by the notice and in accordance with case law², I am not under a duty to search for alternative solutions which have not been presented to me.
17. I conclude that the steps required by the notice do not exceed what is necessary to achieve the purpose of the notice. Accordingly, the appeals on ground (f) fail.

The Appeals on Ground (g)

18. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is 5 months. The appellants have requested this be extended to 9 months to allow sufficient time to undertake the requirements but no reasons for the requested extension have been provided.
19. Having assessed the site during my visit, I note that parts of area B may become waterlogged during autumn and winter making removing items, particularly the storage containers, more difficult. I need to balance the harm resulting from the breach of planning control and the need for a prompt resolution against the fact that the decision on these appeals is being made in the autumn. I consider it reasonable and proportionate to extend the period for compliance with requirement 1 from 5 months to 9 months to allow action to be taken during dryer months.
20. However, area A is accessed directly from the road and has a partially gravelled surface. Given this fact and the nature of the items which need to be removed from area A, I see no reason why requirement 2 could not be achieved within 5 months.
21. For the reasons given above, I conclude that the period for compliance with requirement 1 of the notice falls short of what is reasonable. It would be reasonable to extend the compliance period for requirement 1 to 9 months and the appeals on ground (g) succeed to this extent. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly, as set out below in the formal decision.

Conclusion

22. For the reasons given above, I conclude that the appeals on hidden ground (c) and ground (f) fail. However, I conclude that the period for compliance with requirement 1 of the notice falls short of what is reasonable. Therefore, I shall vary the period for compliance in the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

² Williams v SSCLG & Chiltern DC [2013] EWCA Civ 958

Formal Decision

23. It is directed that the enforcement notice is corrected as follows:

- In section 3 (the matters which appear to constitute the breach of planning control), delete the current paragraph in its entirety and substitute the words 'Without planning permission, the material change of use of land (identified in blue as area B on the attached plan) from agricultural use to a mixed use of agriculture, residential garden use (use class C3) and storage (use class B8), including the siting of shipping containers, storage of vehicles, domestic paraphernalia, waste, building materials, rubble and plant; and, the material change of use of land (identified in green as area A on the attached plan) from residential use (use class C3), to a mixed use of residential (use class C3) and storage (use class B8), including the dismantling and storage of vehicles and associated materials and equipment.'

24. It is also directed that the enforcement notice is varied as follows:

- In section 6 (time for compliance), delete the words '5 months after this notice takes effect' and substitute the words 'Requirement 1: 9 months after this notice takes effect; Requirement 2: 5 months after this notice takes effect'.

25. Subject to these corrections and variation the appeals are dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR