



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 5th March 2024

Appeal Ref: APP/Q9495/C/23/3318083

Land At Brook Farm, Thackthwaite, Lorton, Cockermouth, Cumbria

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Judith Hope against an enforcement notice issued by Lake District National Park Authority (NPA).
 - The notice was issued on 31 January 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of the land from agriculture to a mixed use of agriculture and the siting of two residential units, occupied as short term holiday letting accommodation.
 - The requirements of the notice are to: a) Permanently discontinue the use of the Land for the siting of residential units occupied as short-term holiday letting accommodation; b) Permanently remove the 'School Bus', as indicated in the approximate location marked with a black circle on the plan attached to the notice and as shown in Image A attached to the notice, from the land; c) Permanently remove the 'Hidden Hut', as indicated in the approximate location marked with a black triangle on the plan attached to the notice and as shown in Image B attached to the notice, from the land; d) Permanently remove any associated wood fired hot tubs, tables, chairs, firepits and timber boards used to provide paths to and around the units from the land; e) Permanently remove the two vehicle parking areas, in the approximate location hatched black on the plan attached to the notice, and restore the land to its former condition.
 - The period for compliance with the requirements is: Two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (e), and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text in its entirety from the requirements paragraph and its replacement with the following text:

'a) Cease the unauthorised mixed use, through the cessation of the use of the land for siting two residential units occupied as short-term holiday letting accommodation; b) Remove the 'School Bus', as indicated in the approximate location marked with a black circle on the plan attached to the notice and as shown in Image A attached to the notice, from the land; c) Remove the 'Hidden Hut', as indicated in the approximate location marked with a black triangle on the plan attached to the notice and as shown in Image B attached to the notice, from the land; d) Remove any associated wood fired hot tubs, tables, chairs, firepits and timber boards used to provide paths to and around the units from the land; e) Remove the two vehicle parking areas, in the approximate location hatched black on the plan attached to the notice, and restore the land to its former condition.'
2. The appeal is dismissed, and the enforcement notice, as amended, is upheld.

Preliminary Matters

3. The determination of the appeal turns on the consideration of grounds (c) and (e), which are legal grounds, and ground (f), which is a ground of mitigation. The written evidence alone was sufficient for me to consider these grounds, and so it was not necessary for me to carry out a site inspection.

The notice

4. The notice requires the unauthorised mixed use to 'discontinue'. In the interests of precision, I have directed that this term be replaced by the word 'cease'. This is because of a subtle difference in the meaning of these words: the word 'discontinue' carries the inference that, if the continuity of the use has been broken, it might recommence as a future unspecified time. Conversely, the word 'cease' more definitively means bring to an end. I have also corrected the wording of the first requirement so that it more accurately reflects and follows on from the wording of the allegation. My reasons for the removal of the word 'Permanently' from the requirements paragraph are set out below in my consideration of the appeal on ground (f).

The appeal on ground (e)

5. Ground (e) is that the notice was not properly served on everyone with an interest in the land.
6. The appellant, who owns the land that is the subject of the notice, confirms that she was served with a copy of the enforcement notice. However, she does not own the two holiday units specified in the notice as they are owned by a company called Hinterlandes. She charges a fee for the use of the land on the understanding that all necessary permissions are obtained, but has no active part in the letting arrangements for the units.
7. However, the appellant contends that the owners of the units have not been served with a copy of the notice, although she understands that the copies displayed at the entrance to the land were for their attention. She explains that Hinterlandes have no reason to approach Brook Farm, where the notice was located, and so were unaware of it.
8. Even if they had been present at Brook Farm, they would not have been aware that the notice, pinned to the appellant's land, was for their attention. She therefore argues that the notice has not properly been served on the owners of the holiday units, and so their right of appeal has been prejudiced.
9. S329 sets out the required methods for the service of notices. Where a notice is required to be served on any person as an occupier of premises, Paragraph (2)(a)(ii) provides for the notice to be 'affixed conspicuously to some object on those premises.'
10. The NPA explain that whilst they had been able to communicate with Hinterlandes by email, they were unable to obtain a contact address for the company, which is why they displayed the notice on the land. They do not go into detail on why they could not obtain an address directly from the company, or from an internet search. Nonetheless, as noted above, the Act allows for notices to be served by affixation to the land in question, and the appellant does not produce any evidence to the contrary.

11. Moreover, even if a notice has not been correctly served, section 176(5) of the Act provides that failure to serve may be disregarded if an appellant has not been substantially prejudiced. In this case, Hinterlandes have not submitted an appeal, but on the other hand, they have not made any representation that they have been prejudiced by the NPA's method of service.
12. Where substantial prejudice has occurred, it is possible within the appeal process to give the party in question time to make late representations to the appeal. However, there is no evidence before me that Hinterlandes have sought this remedy.
13. I therefore conclude that the notice was properly served, and that no substantial prejudice has arisen to any person with an interest in the land that is the subject of the notice.
14. The appeal on ground (e) therefore fails.

The appeal on ground (c)

15. Ground (c) is that there has not been a breach of planning control. The onus of proof lies on the appellant to make out their case to the standard of the balance of probabilities.
16. The appellant accepts that two units of holiday accommodation have been sited on the farm at various times of the year. The gist of her argument is that the units are moved around so as not to be located on the Brook Farm holding for more than 28 days in any calendar year. As such, she argues that their siting is permitted development within the provisions of Article 3, Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which relates to the temporary use of land.
17. Class B permits 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.
18. Because the units are moveable, it is relevant to consider the limitation under paragraph B.1 whereby development is not permitted by Class B if (c) the use of land is for the siting of any caravan [as defined in s29(1) of the Caravan Sites and Control of Development Act 1960] except a caravan which (i) is a motor vehicle designed or adapted.
19. As the units are moveable and sited on the land for residential use, it should be demonstrated that they are not caravans according to the statutory definition, which is: 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent'. However, no evidence to this effect is produced.
20. Therefore, the appellant needs to demonstrate that the units have not been in place for more than 28 days in any calendar year. The associated moveable structures listed in the notice that facilitate the use must also have been

removed at the end of each temporary period so that the land was returned to its former state.

The NPA's evidence

21. Posts from the operator's Instagram page show the School Bus unit first being sited on the land in June 2019. The School Bus appeared to have been moved to a different part of the land in May 2020, with a post of 20 May 2020 stating: 'Moving day for the bus means lots of lifting, levelling, dragging and pushing..'. The bus was then moved again a year later in May 2021 to a different part of the land. On that basis, the NPA contend that since June 2019, the School Bus has been sited in three different locations within the land that is the subject of the enforcement notice.
22. Further posts from the operator's Instagram page show the shell of the Hidden Hut unit first being brought onto the land in February 2021. The construction of the unit was then finished on site, with timber shingles added and the interior completed. Since its completion, the NPA submit that the Hidden Hut unit has remained on the land, with only small changes to its position.
23. In response to the NPA's request, the operator provided a map showing that 12 locations have been used across four land holdings, but stated that they did not have a record of when the units were moved. They indicated that the movements usually take place on the 28th day of each month, depending on weather conditions, livestock, and other circumstances.
24. They explained that they have over 40 landowners on file, each with their own plots of land, and that they move the units from one five-acre land holding to another five-acre land holding in an anti-clockwise rotation around the sites on the map. The NPA requested further information, including the names and addresses of the landowners, the precise locations of the sites, and evidence for the movement of the units, but this information was not provided.
25. As a result of their investigation, the NPA assert that the School Bus and the Hidden Hut have been sited on the land for residential use for more than 28 days in the 12 month period prior to the notice being served.

The appellant's evidence

26. In response, the appellant states that full details of the enterprise were forwarded to the NPA. However, she confirms that specific locations and contact details were not given for reasons of commercial confidentiality. She states that the Instagram posts are snapshots in time taken on certain dates for marketing purposes, and are not intended as a detailed record of events.
27. Moving holiday units every 28 days through a rotation of 12 different locations would not be a small undertaking. For example, it would be essential for the location and visitor access information to be updated every 28 days to ensure holiday makers where able to find their accommodation.
28. It presumably also requires plenty of regular communication to organise the logistics of physically re-siting the units on such a frequent basis. It would therefore be expected that a record of the exact dates of the moves could be drawn up to show that the units have not been on the land for more than 28 days in any 12 month period. However, no such evidence has been made available.

29. Crucially, all of the conditions of Class B must be met for the development in question to be permitted. As noted above, this means that any moveable structure for the purposes of the permitted use must also be removed at the end of each temporary period so that the land is returned to its former state. However, the appellant offers little evidence to show that this part of Class B has been met.

Assessment against new temporary PD rights

30. For the sake of completeness, I have considered the development in the light of new PD rights. Firstly, Part 4, Class BA allowed for an additional 28 days of Class B use – or 56 days in total – between 1 January and 31 December 2021, but not for the use of land as a caravan site under BA.1(b). However, given the lack of detail as to the movements of the two units, I cannot be certain that they benefitted from this provision so as to be permitted development.
31. Secondly, Part 4, Class BC permits the use of land as a recreational campsite for not more than 60 days in any calendar year, with not more than 50 pitches and any moveable structure reasonably necessary for the proposed use. Paragraph BC.1(f) does not permit the siting of a caravan except a caravan which is used as a motor vehicle designed or adapted for human habitation (in other words, camper vans are permitted). However, condition BC.2 requires a prior notification procedure. Again, there is little evidence that the development in question is permitted by Class BC.

Conclusion on ground (c)

32. The appellant argues that the NPA have offered little proof to show that her version of events is wrong. Unfortunately, this approach does not go in her favour because the onus of proof lies on the appellant in bringing an appeal on ground (c), as set out above.
33. The appellant's evidence has fallen short of demonstrating, on the balance of probabilities, that the siting of the holiday units for residential use falls within permitted development limits. Therefore, in the absence of convincing evidence to the contrary, I find that a material change of use of the land has occurred.
34. On that basis, the matters alleged in the notice constitute a breach of planning control and so the appeal on ground (c) fails.

The appeal on ground (f)

35. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. Since the requirements of the enforcement notice are to cease the unauthorised mixed use and remove the associated structures from the land, the purpose of the notice is to remedy the breach.
36. The notice requires the appellant to permanently cease the use of the land for the siting of residential units as short-term holiday letting accommodation. The appellant argues that this requirement removes her permitted development rights to use the land within the limitations of the GPDO. She contends that this requirement exceeds what is reasonably necessary to remedy the breach alleged in the notice.

37. The 'Mansi' principle, derived from the high Court decision in *Mansi v Elstree RDC* [1964] 16 P&CR 153) confirms that a notice must not purport to stop a developer from doing something they are entitled to do without planning permission. It follows that the requirements do not prevent the appellant from reverting to the lawful use of the land or from exercising their lawful use rights. As a result, there is not need for the notice to make express provision for the exercise of PD rights. However, the use of the word 'permanently' in the requirements is misleading and unnecessary, and so I direct that it be removed.
38. The notice also requires the removal of the associated wood fired hot tubs, tables, chairs, firepits and timber boards. The appellant argues that this is excessive on the grounds that these items do not constitute development under Section 55 of the Act. Instead, they are only present when the holiday units are on the land. However, the court held in *Somak Travel v SSE & Brent LBC* [1987] JPL 630 that a notice can require the removal of works which do not amount to development in themselves, but which facilitate an unauthorised material change of use. The listed items fall within this category, and so the requirement for their removal is not excessive.
39. The hard standings have been formed on the land by two existing field gates which provide access from the road. From the hard standings, stone tracks have been laid which lead to each of the residential units. On that basis, the NPA argue that the hard standings have been provided to facilitate the unauthorised development. Furthermore, because they are within 25m of a highway and are not reasonably required for the purposes or agriculture, they are not permitted development.
40. In response, the appellant states that no engineering or other operations have taken place to form them, and that the parking areas are merely existing field entrances and farm tracks which, on such a narrow road, serve as passing places. However, she confirms that they are used when the holiday units are on the land.
41. There is insufficient evidence before me to show that the hard standings are permitted development, or were formed in connection with the lawful use of the land. Moreover, their use facilitates the unauthorised development, and so, as with the other associated items listed in requirement d), their removal is not excessive.
42. For clarity, I have directed that the notice be amended to remove the term 'permanently'. In all other respects, I am satisfied that the requirements are commensurate with the purpose of the notice to remedy the breach of planning control and are not excessive.
43. To that limited extent, the appeal on ground (f) succeeds.

Overall conclusion

44. The appeal is dismissed, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR