



Appeal Decision

Site visit made on 15 May 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd June 2024

Appeal Ref: APP/U1430/C/23/3326840

Land forming part of Whiteland Woods, Westfield Lane, Westfield, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Ms Kerrie Robinson against an enforcement notice issued by Rother District Council.
- The notice was issued on 12 June 2023.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Land from a mixed use of agricultural and use as a kennels and cattery business to a mixed use of agricultural, use as a kennels and cattery business and use for residential purposes.
- The requirements of the notice are: 1. Cease the use of the Land for residential purposes. 2. Remove from the Land the timber clad building, as shown for identification purposes in blue on the attached plans and the surrounding associated enclosure of close board timber frame fencing, as shown for identification purposes in purple on the attached plans), both being associated with the Unauthorised Change of Use. 3. Remove from the Land all pipework, power connections and the satellite dish attached to the timber clad building, being associated to the Unauthorised Change of Use. 4. Remove from the Land all other items associated with the Unauthorised Change of Use to include, but are not limited to, all garden furniture, hanging baskets, plant pots, the small water feature, and all household furniture and other household and personal goods located within the timber clad building. 5. Remove all other waste and materials from the Land arising from compliance with the steps 1. to 4. above.
- The period for compliance with the requirements is 6 months from the day the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Act.

Summary of 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.

The Notice

1. It is incumbent on me to get the notice in order. The breach of planning control refers to a change of use of land. A change of use of land does not constitute development requiring planning permission unless it is a material change in the use of land¹. It is clear from reading the notice as a whole and the submissions that a material change of use of the land is being alleged. The breach of planning control stated in the notice can therefore be corrected accordingly without causing injustice to any parties².
2. There are obvious minor typographical errors in the steps required to be taken by the notice. These can also be corrected easily without causing injustice.

¹ Sections 55 and 57 of the Act

² Section 176 of the Act

Ground (d)

3. For the appeal to succeed the appellant would need to show that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control stated in the notice.
4. The breach stated at paragraph 3 of the notice is an unauthorised material change of use of the land to a mixed use of agricultural, use as a kennels and cattery business and use for residential purposes. At the time the notice was issued, no enforcement action could be taken in respect of an unauthorised material change of use after the end of the period of 10 years beginning with the date of the breach, other than a material change of use of a building to use as a single dwellinghouse³.
5. Paragraph 3 of the notice does not include any reference to the change of use of any building to use as a single dwellinghouse. It is therefore necessary for the appellant to demonstrate, on the balance of probabilities, that the unauthorised material change of use of the land stated in the notice took place on or before 12 June 2013.
6. It is claimed that a caravan was in place on the land since some point between December 2005 and 23 June 2009. This is supported by aerial photographs, which show what could be a caravan on the land on 23 June 2009, 9 July 2013, and 20 April 2015. A signed letter from Clifford Evident, who carried out groundworks and garden jobs at the site between March 2011 and July 2017, describes people residing on the premises in a caravan and then a timber building when he worked there. The aerial photographs show the caravan, if that is what it was, had been removed from the land at some point between 20 April 2015 and 5 May 2018.
7. An email dated 9 October 2016 from Simon Gilby of 1066 Carpentry to the appellant outlines a quotation for a watertight cabin on a concrete base, with the cabin to contain rooms for a bedroom, bathroom, open-plan front room and a kitchen. The quotation does not confirm that any such works would commence on any specific date, or that any works were substantially completed at any specific time. However, a signed letter from Day Walpole states that she resided in 'the residential log cabin' at the site between November 2016 and April 2018. Other evidence suggests that building has been lived in by other people since.
8. I saw a timber clad building on the land during my site visit, which could reasonably be described as a residential log cabin. The aerial photographs show that building was erected at some point between 20 April 2015 and 5 May 2018. A Planning Contravention Notice (PCN) response by the appellant claims works on the building commenced on 14 October 2016 and that it was completed and occupied as a single dwellinghouse on 29 November 2016.
9. The appellant's evidence is basic and limited. It lacks detail and is generally imprecise and ambiguous. For example, I do not take the aerial photographs as reliable or convincing evidence that a caravan existed on the land and was occupied for residential purposes between at least 23 June 2009 until the erection and occupation of the timber clad building. This is because the photographs do not show the sides or interior of the item claimed to have been

³ Section 171B of the Act, prior to 25 April 2024

- a caravan, and they do not demonstrate, on the balance of probabilities, that it was a caravan used for residential purposes.
10. The letter from Mr Evident offers scant detail to support the claims made, meaning I cannot assign it significant weight either. As such, there is a paucity of clear and reliable evidence to support claims that the land was used for any residential purposes prior to the erection of the timber clad building.
 11. There are serious criminal sanctions for giving false or misleading information in a PCN response. As such, when read alongside the basic evidence from Mr Gilby and Miss Walpole, I assign significant weight to the appellant's claims made in the PCN response. This means it is more likely than not that the timber clad building was substantially complete and occupied as a single dwellinghouse on 29 November 2016. It is less clear whether the building has remained in continuous use as a single dwellinghouse since, but that is beside the point in this particular case, where the breach of planning control is the unauthorised material change of use of the land to a mixed use for agricultural, kennels, cattery, and residential purposes.
 12. Even if the timber clad building has been in use as a single dwellinghouse continuously since 29 November 2016, that use of the building or land would not be lawful under the provisions of sections 171B(2) and 191 of the Act. This is because section 171B(2) specifically refers to a change of use of any building to use as a single dwellinghouse, whereas the timber clad building was erected as a single dwellinghouse from the outset. There was no change of use of any building to a single dwellinghouse, only a change of use of the land.
 13. Caselaw has found that evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
 14. I have found the appellant's evidence concerning the use of the land prior to the erection of the timber clad building to be imprecise and ambiguous. I cannot therefore rely on it to support claims that the land has been used for residential purposes continually between at least 12 June 2013 and 29 November 2016. It has not been demonstrated, on the balance of probabilities, that the unauthorised material change of use of the land stated in the notice took place on or before 12 June 2013.
 15. The appeal under ground (d) must therefore fail.

Other Matters

16. With regard to section 173(3) and (4) of the Act, the notice seeks to remedy the breach of planning control by discontinuing the unauthorised use and restoring the land to its condition before the breach took place. I sought views from the parties on the findings in *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467, as the Court of Appeal handed down its judgement in that case after the deadline for final comments. With that section of the Act and those findings in mind, the notice should not require the removal of works which are more than ancillary or secondary to the material change of use stated in the notice, such as any works which were fundamental to the material change of use.

17. The timber clad building, pipework and power connections referred to by the second and third steps of the notice are operational development in their own rights, separate to the material change of use they brought about. Those works are not merely associated with the breach of planning control stated in the notice; they are causative of the material change of use. Moreover, the evidence indicates that they were carried out in November 2016, and would be exempt from planning control with regard to section 171B of the Act. The same cannot be said for the other works referred to at paragraph 5 of the notice.
18. I shall therefore use my powers under section 176 of the Act to vary the second and third steps at paragraph 5 of the notice by deleting the requirements to remove the timber clad building, pipework and power connections from the land.
19. The first step at paragraph 5 of the notice would effectively require the use of the timber clad building as a single dwellinghouse to cease. As I have explained above, that use of the building is not lawful. The timber clad building may therefore only be used for purposes associated with, or ancillary to, the mixed use of the land for agricultural, kennels and cattery business purposes.

Conclusion

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

Formal Decision

21. It is directed that the enforcement notice is corrected and varied by:
 - The insertion of the text 'material' immediately before the text 'change of use of the Land' at paragraph 3 of the enforcement notice;
 - The deletion of the text 'timber clad building, as shown for identification purposes in blue on the attached plans and the surrounding associated enclosure of' and '), both being associated to the Unauthorised Change of Use' at the second step of paragraph 5 of the enforcement notice;
 - The deletion of the text 'all pipework, power connections and' and ', being associated to the Unauthorised Change of Use' at the third step of paragraph 5 of the enforcement notice;
 - The deletion of the text 'are' at the fourth step of paragraph 5 of the enforcement notice;
 - The deletion of the text 'located' at the fourth step of paragraph 5 of the enforcement notice and its substitution for the text 'located'; and
 - The deletion of the text 'other' at the fifth step of paragraph 5 of the enforcement notice.
22. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR