



Appeal Decisions

Site visit made on 25 June 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal A Ref: APP/L2250/C/23/3321005

Appeal B Ref: APP/L2250/C/23/3321006

Hoad's Meadow Alpaca Retreat, Hoad's Lane, Swingfield, Kent CT15 7HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal A is made by Mr Daniel Bond and appeal B by Mrs Stacey Bond against an enforcement notice issued by Folkestone and Hythe District Council.
- The notice was issued on 5 April 2023.
- The breach of planning control as alleged in the notice is unauthorised change of use of land from agriculture to a mixed use for residential use, holiday/tourism use, (including the keeping of alpacas and other animals) and the installation and siting of various structures, equipment and paraphernalia associated with those uses, including containers, solar panels, a prison van for use as a chicken house, alpaca shelter, hot tub, diesel tank and play equipment; the erection of timber fencing and gates; and the laying of hardstanding.
- The requirements of the notice are to:
 - I. Cease the residential use of the land.
 - II. Cease the tourism/holiday use of the land.
 - III. Remove all building and structures from the land.
 - IV. Remove all vehicles and paraphernalia associated with the residential and tourism uses from the land including solar panels, diesel tank and hot tub.
 - V. Remove the hardstanding not permitted under Y19/1383/FH
 - VI. Remove the close boarded fencing and gates at the front of the site.
 - VII. Restore the land to its previous condition.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

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

Application for costs

1. An application for costs was made by Folkestone and Hythe District Council against Mr Daniel Bond and Mrs Stacey Bond. This application is the subject of a separate Decision.

Preliminary Matters

2. For clarity, the breach of planning control should include the phrase "without planning permission". Section 176(1) of the Act allows me to correct any defect, error or misdescription in the enforcement notice. I consider that to be a defect in the notice. As there are no material implications to this, amending the notice to include this phrase will not cause injustice to any party, so I will add that phrase to the description of the breach of planning control.

3. It is also normal practice to set out the immunity period within the notice. That alerts appellants to whether there may be an appeal under ground (d) that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. In this case, the allegation relates to a mixed use and the appellant has confirmed this use commenced less than four years ago.
4. The immunity periods are set out at section 171B of the Act. This has been amended since issue of the notice, although for the purposes of my decision the previous periods are relevant. In terms of changes of use, other than to a single dwellinghouse, the immunity period would be 10 years. In this case, the allegation relates to a mixed use, albeit including residential occupation. The appellant suggests that the structures on the site might be temporary, in which case their stationing would form part of the use, although a permanent building would be four years. On that basis, I concur with the Council that the appropriate period would be 10 years.
5. Given the parties agree that the mixed use started within the last four years, there can be no hidden ground (d) appeal. Whilst this should have been included within the notice when issued, there is no benefit in correcting the notice to include the immunity period at this stage. There will be no injustice if I proceed with the appeals.

The Appeals on Ground (f)

6. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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 to amenity which has been caused by any such breach. I note that the enforcement notice does not set out the purpose of the requirements set out at Section 173(4) of the Act. In this case, the requirements seek to return the land to its previous condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
7. The appellant suggests that the steps to remedy the breach of planning control are excessive, for example suggesting that the land has not been in agricultural use previously, tourism uses may be compatible with surrounding uses and that it does not affect the landscape and scenic beauty of the Kent Downs National Landscape (formerly Area of Outstanding Natural Beauty) and Special Landscape Area. However, lesser steps would not remedy the breach of planning control. There is no suggestion that any part of the development is not a breach of planning control.
8. I note the appellant's concerns about moving the animals kept on the site. However, the enforcement notice does not expressly require the removal of the animals. Animals may be kept on the site if that is an agricultural use of the land.
9. Since an appeal on ground (a) has not been made there is no deemed application for planning permission before me. As a result, I am unable to consider granting planning permission for part of the existing development to remain. Allowing part of it to remain would not fully remedy the breach of planning control.

10. I note the concerns relating to the appellant's medical condition, but the issue under a ground (f) appeal is strictly whether the requirements are excessive to remedy the breach. There is no scope to consider whether the requirements are excessive in terms of their impacts on the individual.
11. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Formal Decisions

12. It is directed that the enforcement notice is corrected by the deletion of the word "Unauthorised" at the start of section 3 The Matter(s) Which Appear To Constitute The Breach of Planning Control and substitution with the words "Without planning permission, unauthorised". Subject to the correction, the appeals are dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR