



Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/L2630/C/23/3333564

Hill House, The Green, Saxlingham Nethergate, Norfolk NR15 1TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Darren Swayne of Elsewhere (UK) Limited against an enforcement notice issued by South Norfolk District Council.
- The notice was issued on 27 October 2023.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - (1) *The material change of use of the Land from a dwellinghouse (Use Class C3) with associated grounds, gardens and buildings to a mixed use as a dwellinghouse, holiday accommodation (not within Use Class C3) and commercial events venue (including but not limited to use for celebrations, parties, gatherings, stag / hen dos, corporate events) including large scale outdoor commercial events, glamping and provision of ancillary services and storage, and the siting of a straw bale horseshoe structure, three lorry containers and paraphernalia used in association with the unauthorised use (Sui Generis)*
 - (2) *Operational development consisting of the creation of a straw bale horseshoe structure measuring 33.5m by 23m and the siting of three lorry containers.*
- The requirements of the notice are to:
 - (1) *Cease the use of the Land as holiday accommodation (not within Use Class C3), commercial events venue (including celebrations, parties, gatherings, stag/hen dos, corporate events), large scale outdoor commercial events, glamping, provision of ancillary services, storage and the siting of a straw bale horseshoe structure and three lorry containers.*
 - (2) *Remove from the Land the straw bale horseshoe structure and the three lorry containers.*
- The periods for compliance with the requirements are: 2 weeks from the date the notice takes effect for requirement (1); and 8 weeks from the date the notice takes effect for requirement (2).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Applications for Costs

1. An application for costs has been made by Mr Darren Swayne against South Norfolk District Council. This application is the subject of a separate decision.

Preliminary Matters

Appeal Site and Planning Unit

2. The Council says the appeal site is made up of a single planning unit. Despite some components of the alleged matters taking place in different parts of the appeal site, the EN has therefore been issued against the appeal site as a whole. Conversely, the appellant says the appeal site is made up of three distinct planning units. Given the relevance of this point to the grounds of appeal, I have addressed it first, before further discussion of the grounds.
3. There are three distinct areas within the appeal site: Hill House and its gardens (Hill House); a large field adjacent to Hill House (Events Field); and an area to the south of the site comprising stables, a greenhouse and three containers (Storage Area).
4. Each of these areas is used in a different way: Hill House is predominantly used as holiday accommodation and as a commercial events venue; the Events Field is, on occasion, used for large scale outdoor commercial events and glamping; and the storage area, which is rented out to Elsewhere (UK) Limited, provides storage in connection with the appellant's events business. This business serves not just Hill House, but also events held elsewhere in the UK. Functionally, the use of each of these areas is therefore distinct from one another.
5. Given access between the component parts of the appeal site is not restricted, guests of Hill House are not precluded from entering the Events Field during their stay. However, the two spaces are advertised separately for exclusive hire, which attests to their functional separation. There have been occasions where attendees of large-scale outdoor commercial events in the Events Field have chosen to stay in Hill House following an event. Whilst again, this does create some degree of overlap between the two areas, this relationship is primarily attributed to Hill House being a convenient place to stay after these events, much like any other holiday accommodation in the area.
6. In terms of physical arrangement, Hill House and the Events Field are separated by a clear boundary of trees and hedgerow, which means the two areas are physically distinct from one another. Access to the Storage Area can either be gained via a gate through the trees and hedgerow from Hill House, or else from a separate access along Plummers Lane to the south of the site. Again, this means these areas are clearly separate. Whilst there is less physical demarcation between the Events Field and the Storage Area, the Storage Area is confined to a discrete area at the very south of the appeal site, which means the two areas still feel separate from one another.
7. Given the degree of physical and functional separation between the three areas, I consider each constitutes its own planning unit. This conclusion is consistent with the principles established in *Burdle*¹, where it was held that "*it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. Here each area (with its incidental activities) ought to be considered a separate unit*".

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

Evidence

8. Just before the Hearing, I accepted a number of late documents into evidence which were submitted by the appellant. These documents related to a planning application (reference 2024/0426/F) concerning the appeal site for a similar development to that alleged in the Enforcement Notice (EN). The documents included a committee report, updated consultation responses, noise management plans, vehicle tracking information and other application plans, all of which helped narrow the issues in dispute between the main parties. The documents were not available for submission within the appeal timetable, so it was not unreasonable for them to be submitted at a late stage. Given the Council was already familiar with them (and some were even the Council's own documents), I am satisfied that accepting them late did not cause undue prejudice.

Appeal on Ground C

9. Pursuant to the appeal on ground (c), the appellant says parts of the matters alleged do not constitute a breach of planning control. Specifically, the appellant says the large outdoor commercial events, glamping and provision of ancillary services benefit from permitted development rights relating to the temporary use of land. The appellant also says the straw bale horseshoe structure and three lorry containers do not comprise development. In turn, the appellant says none of these components of the alleged development required planning permission. As a legal ground of appeal, the burden is on the appellant to demonstrate their case, on the balance of probability. Planning merits are not relevant.

Outdoor Commercial Events

10. Under Class B of Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), land can be used "*for any purpose for not more than 28 days in total in any calendar year*". To benefit from the temporary use rights, the land cannot be a building or be within the curtilage of a building. Given the main access into the Events Field falls within the curtilage to Hill House, the Council says these rights cannot be relied on.
11. The large-scale outdoor commercial events have typically included the provision of marquees, a catering tent, toilet and shower facilities, glamping tents and other ancillary services (such as water and electric). These facilities are all understood to have been sited within the Events Field. Irrespective of how access is afforded to the site, the events themselves have therefore taken place within the Events Field. The main parties accept that the Events Field is outside of the curtilage to Hill House and the Storage Area, and based on my own observations, I have no reason to disagree. There is nothing in the legislation which says temporary use rights cannot be relied on in these circumstances, even where access is gained via a building's curtilage.
12. For temporary use rights to apply, the use of land must not exceed 28 days in any calendar year. During the Hearing, it was suggested by Interested Parties that the 28-day threshold had been breached. However, the appellant's sworn statement says the Events Field was used for 3 nights in 2019, 4 nights in 2021, 11 nights in 2022, and not at all in 2020 or 2023. These numbers are consistent with the Council's own records for when events have taken place.

The empirical evidence before me therefore indicates the number of large-scale outdoor events held in each calendar year has been comfortably within the 28-day threshold for the temporary use rights to apply.

13. Notably, the appellant says in their sworn statement that “*we had been monitoring field use and logging every time we went onto the field to build out and take down tents to ensure we always operated within our allowed days*”. Given the appellant was carrying out the events in reliance on a confirmation from the Council that the Events Field could be used on the basis of the temporary use rights, it makes sense that the number of events would be carefully managed in this way.
14. On the evidence before me, use of the Events Field for large-scale outdoor commercial events appears to have remained within the 28-day threshold set out in the legislation. The events have also not taken place within the curtilage of a building. The appellant has therefore demonstrated, on the balance of probability, that use of the Events Field for large-scale outdoor events, glamping and provision of ancillary services was permitted by the temporary use rights afforded by Class B of Part 4, Schedule 2 of the GPDO. In turn, these events did not require planning permission and did not constitute a breach of planning control at the time the EN was issued.
15. Insofar as the appeal on ground (c) relates to the large scale outdoor commercial events, glamping and provision of ancillary services and storage, it therefore succeeds.

Straw Bale Horseshoe Structure

16. The horseshoe structure, which is sited relatively centrally in the Events Field, forms part of the alleged mixed-use in the EN, and is also alleged separately as operational development.
17. In terms of the alleged operational development, I have assessed the structure by reference to *Skerritts*², which sets out three primary factors pertinent to whether or not a structure is a building: size; permanence; and physical attachment to the ground. In terms of size, the structure is large enough to surround a marquee on three sides, which enables it to act as an acoustic sound barrier when events are ongoing. However, notwithstanding its ample size, the structure is composed of straw which will rot and decay in time, which limits its overall degree of permanence. The structure also supports itself and is not physically attached to the ground, which means it is moveable. In the context of *Skerritts*, the horseshoe structure would therefore not be considered a building or building operation, and in line with s55(2) of the 1990 Act, would not comprise operational development.
18. In terms of its role in the alleged use, the horseshoe structure, which is moveable, would fall within the remit of the temporary use rights, as these rights specifically allow the “*provision on the land of any moveable structure for the purpose of the permitted use*”. The siting of the horseshoe structure in association with the use of the Events Field for large-scale outdoor events would therefore be permitted development.

² *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council* (No. 2) [2000] EWCA Civ 5569; [2000] JPL 1025

19. Nonetheless, the horseshoe structure has remained in the Events Field since it was first placed on the site in 2019. Physically, it has therefore exceeded the 28-day threshold prescribed under the temporary use rights. However, consistent with the position established in *Ramsey*³, unless physical alterations to land for the purpose of a temporary use would make it difficult or impossible for the site to revert to its previously normal use, then those physical alterations are irrelevant. This is because those physical changes would themselves be subject to planning control (if development in their own right). In this instance, the straw horseshoe structure would not prevent the Events Field from reverting to its normal use (whether agricultural or otherwise), so would not affect the applicability of the temporary use rights.
20. In turn, the appellant has demonstrated, on the balance of probability, that neither the erection nor use of the horseshoe structure required planning permission. Therefore, the horseshoe structure did not constitute a breach of planning control. Insofar as the ground (c) appeal relates to the straw horseshoe structure, it therefore succeeds.

Lorry Containers

21. There are three containers within the Storage Area which are used for storage in conjunction with the appellant's events business. As with the horseshoe structure, the storage containers form part of the alleged mixed-use, and are separately alleged to be operational development.
22. In terms of operational development, I have again assessed the containers in the context of *Skerritts*. The three containers are each typical in size of a standard lorry container, and would have been brought to site already constructed. The containers are not physically attached to the ground, which limits their degree of permanence. Whilst they have remained in the same place to date, the containers would be readily moveable to different parts of the site (or elsewhere) if and when needed. When these factors are considered together, I do not consider that the containers would constitute a building or building operation.
23. In terms of use, the storage containers were introduced to the Storage Area in 2016. Whilst this is discussed in more detail in respect of the ground (d) appeal, it is accepted that a storage use had been ongoing within the Storage Area since approximately 2005, when the stables were first used for this purpose. This means the storage use within this part of the appeal site was already long-established at the time the containers were brought on to site, which is not disputed by the Council.
24. Whilst the introduction of the three containers undoubtedly increased the storage capacity of the Storage Area, they are unlikely to have made a material difference to how the Storage Area was used, nor the associated planning impact arising from this part of the site.
25. In particular, there is little evidence before me to suggest the traffic movements associated with the storage use were materially different following introduction of the containers. In terms of their visual impact, the containers are barely visible from most public vantage points, owing to the dense and tall boundary treatments around the site. Even where glimpsed views of the

³ *Ramsey v Secretary of State* [2002] JPL 1123

containers are possible, they are seen within the context of the stable building and greenhouse, and integrate effectively with the built fabric of this part of the site.

26. The siting of the containers for storage purposes was therefore consistent with the established use within this part of the site, and their introduction would not have made a material difference to the overall planning impact of the Storage Area. In turn, the siting of the storage containers would not have resulted in a MCU of the Storage Area (nor of the appeal site as a whole).
27. In turn, the appellant has again demonstrated, on the balance of probability, that the containers did not require planning permission, and therefore did not constitute a breach of planning control. The appeal on ground (c) therefore succeeds insofar as it relates to the containers.

Appeal on Ground D

28. Given the success on ground (c), the appeal on ground (d) is limited to the alleged MCU of the appeal site from a dwelling to a mixed-use comprising a dwellinghouse, holiday accommodation, use as a commercial events venue and for storage. Whilst most of this alleged use relates to Hill House, the storage element is confined to the Storage Area, which is a separate planning unit to Hill House. I have therefore addressed this element of the alleged use separately.
29. Pursuant to ground (d), the appellant says the alleged MCU was immune from enforcement on the date of the EN, and therefore lawful. As per s171B(3) of the 1990 Act, no enforcement action can be taken in respect of the alleged breach of planning control after ten years beginning with the date of the breach.
30. To succeed on this ground, the appellant therefore needs to demonstrate the alleged mixed-use had been ongoing continuously and uninterrupted since 27 October 2013 (or earlier), and for a period of at least ten years. Once again, planning merits are not relevant to this ground of appeal, and the burden of proof falls on the appellant, on the balance of probability.

Hill House

31. The appellant acquired the appeal site in 2003. It is common ground that the lawful use of Hill House was as a dwelling at this time. The Council also accepts that a MCU of Hill House from a dwelling to a mixed-use comprising a dwelling, holiday accommodation and as a commercial events venue has taken place, and has been ongoing since at least 2012, if not before. Notably, the Council's delegated report in connection with an application for a Lawful Development Certificate (reference 2022/2086) for the same MCU says "*the guest logs provide detailed information demonstrating that from the beginning of 2012 onwards Hill House was in near constant use for leisure bookings, hen & stag dos, corporate and other events*". There is nothing before me to make me doubt this assessment.
32. However, notwithstanding this overarching period of use, the Council contends that an incremental increase in the sleeping capacity of Hill House and the number of corporate events held, has resulted in an additional MCU of the appeal site within the ten years preceding the EN. In turn, they say the current use of Hill House had not been ongoing for a period of ten years prior to the

date of the EN, and this use was therefore not immune from enforcement at the time of the EN.

33. In 2012, Hill House is understood to have been marketed with a sleeping capacity of 13+. In 2018, the advertised sleeping capacity was increased to 21, and from 2022 onwards, it was advertised as accommodating 21-25 people. However, the appellant says that when the house was first advertised for 13+ people, there were also cots and a number of fold-out beds available. Whilst the advertised sleeping capacity ranged between 13-25 in the ten years preceding the notice, in practice, its actual sleeping capacity was therefore between 20-25. Overall, sleeping capacity has therefore remained broadly consistent throughout the relevant ten-year period.
34. In the ten years preceding the EN, the house was used for between 136 and 212 nights in each calendar year (with the exception of 2020 when occupation was slightly lower due to the COVID lockdown). The fluctuation in the number of nights does not appear to follow any particular pattern, with the number changing year on year within this range. The intensity of overall use has therefore also remained relatively steady throughout the relevant ten-year period.
35. However, the proportion of nights attributed to corporate events has ranged more widely, from 4% to 27% in the ten years preceding the notice. Notably, this percentage has consistently been 20% or higher in the last 5 years, which is indicative of a step-change in the number of corporate events since their inception in or around 2012.
36. Nonetheless, the increase in the number of corporate events within Hill House does not appear to have resulted in any meaningful change in terms of impact. The noise complaints associated with the appeal site correlate directly with the large-scale outdoor commercial events in the Events Field, and not from corporate events held within Hill House. Notably, there is no record of any such complaints before 2019 when these events first began, despite Hill House having been used for corporate events since 2012. There is also limited evidence to suggest any particular difference in traffic impact when the house is used as holiday accommodation when compared to its use for corporate events.
37. Overall, these factors suggest that the increase in the number of corporate events has not resulted in any material change in planning impact, and consequently, has not resulted in a further MCU of Hill House.
38. On the evidence before me, the appellant has therefore demonstrated, on the balance of probability, that the MCU of Hill House from a dwelling to a mixed-use comprising a dwelling, holiday accommodation and use as a commercial events venue had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of the EN. In turn, the alleged MCU was immune from enforcement on the date of the EN, and therefore lawful. I should reiterate that this established lawful use relates to Hill House alone, and no other part of the appeal site.
39. The appeal on ground (d) therefore succeeds insofar as it relates to the alleged MCU of Hill House to a mixed-use comprising a dwelling, holiday accommodation and use as a commercial events venue.

Storage Area

40. Whilst much of the storage component of the alleged mixed-use is focused on the lorry containers, storage also forms part of the alleged mixed-use of the appeal site as a whole. For completeness, I have therefore addressed this component of the mixed-use under ground (d) as well.
41. Within the Storage Area, the stables are understood to have been used for storage purposes since 2005, and greenhouse has been used for the same purpose since 2007. There is no suggestion that there has ever been an interruption in this overall use, which means use of the Storage Area for storage appears to be long-established.
42. The containers were introduced to the Storage Area in 2016. As already set out, I am satisfied that any increased intensity of use attributed to their introduction did not constitute a further MCU of the Storage Area. Rental of the Storage Area to the appellant's business would not also affect my conclusion in this regard. This means use of the Storage Area for storage purposes had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of the EN. The storage use was therefore immune from enforcement on the date of the EN, and lawful.
43. The appeal on ground (d) therefore succeeds insofar as it relates to the allegation of storage use within the Storage Area.

Other Matters

44. Given my conclusions with regard to the number of planning units within the appeal site, the case of *Beach*⁴ is of limited relevance to the outcome of this appeal. However, even if the Storage Area was part of the same planning unit as Hill House, my conclusion on ground (d) would still be the same. This is because the introduction of the containers did not make any material difference to the overall planning impact of the appeal site.
45. Moreover, even if the containers were buildings and therefore operational development, it is common ground that they were placed there in 2016. The containers had therefore been in situ for more than four years prior to the date of the EN, and pursuant to s171B(1) of the TCPA, would have been lawful in any event⁵.
46. Whilst there is much local support for the development, there is also notable opposition within the local community, particularly in respect of the Events Field use. However, concerns relating to noise, disturbance and highway safety all pertain to the planning merits of the development. Whilst these factors can help to assess the planning impact of a use, and in turn the materiality of any change to that use, they are otherwise irrelevant to the consideration of grounds (c) and (d), which are both legal grounds of appeal. Nonetheless, it is worth highlighting that any statutory nuisance which may arise from the development can be controlled via other statutory regimes.

⁴ *Beach v Secretary of State for Transport, Environment and the Regions* [2001] 5 WLUK 143

⁵ Since the EN was issued, the immunity period set out in s171B(1) of the TCPA has been updated to ten years. However, this updated immunity period only applies to operational development which was substantially completed on or after 25 April 2024.

Conclusion

47. For the reasons given above, I conclude that the appeal should succeed on grounds (c) and (d). The enforcement notice will therefore be quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Formal Decision

48. The appeal is allowed and the enforcement notice is quashed.

James Blackwell

INSPECTOR

APPEARANCES

FOR THE APPELLANT

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Jason Parker (Parker Planning Services)
Charles Merrett (FTB Chambers)

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INTERESTED PARTIES

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