



Appeal Decision

Site visit made on 29 October 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Appeal Ref: APP/D1265/C/22/3307803

Land adjacent to Gibraltar Cottages, East Knighton, Dorchester, Dorset DT2 8LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mark Hurlstone against an enforcement notice issued by Dorset Council.
- The notice was issued on 1 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from an agricultural use to a mixed use consisting of a) storage, and b) timber cutting and processing.
- The requirements of the notice are to:
 - (i) Permanently cease the importation, cutting and processing of timber on the Land
 - (ii) Permanently cease the storage of vehicles and machinery on the Land
 - (iii) Permanently remove from the land all timber, vehicles, plant, machinery and equipment on the Land.
 - (iv) Restore the Land to its former condition, by replacing topsoil and reseeding the ground as appropriate with a mix of meadow grass seed to restore the area to its former condition as pasture.
- The period for compliance with the requirements is: Within 3 months from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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 dismissed, the enforcement notice is upheld with corrections and variations, and planning permission is refused.

Preliminary Matters

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice ("the Notice") in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act") include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The appellant suggests that the Enforcement Notice is drawn too broadly in that 'storage' is not defined. However, while it appears that, primarily, timber is being stored, I also saw other machinery connected with the cutting and processing of timber at the site. While it may be possible to vary the notice to refer only to the items present on the site, there is nothing manifestly wrong in the broad description chosen by the Council. The Notice is, therefore, clear

and precise as to what is alleged. It is also clear that the purpose of the Notice is to remedy the breach of planning control and both parties have approached the appeal on that basis.

3. However, there is an internal inconsistency within the Notice in that it alleges the material change of use of the land but requires the two separate components of the mixed use to cease independently. Therefore, the requirements do not target the alleged breach of planning control. In particular, they only requires the storage of vehicles and machinery to cease whereas the allegation is for a generic mixed use including 'storage'. Thus, as provided by Section 173(11) of the 1990 Act, there is potential for an unfettered storage use to gain planning permission.
4. Accordingly, it is necessary to correct the Notice to require the cessation of the mixed use. The Council has suggested that such a correction may allow one or other of the uses to continue independently, but that is not what is occurring now and not what is alleged. If one or other of the uses did continue independently, it would be open to the Council to serve a further enforcement notice directed at such a use. Therefore, no injustice would arise if I were to correct the Notice to require the mixed use to cease.
5. The Notice contains a minor typographical error in that one of the references to 'the Land' in the third requirement has a lower case 'L'. As "the Land" is a defined term within the Notice, this should be replaced with an upper case 'L'. In the fourth requirement the need to restore the Land to its former condition is stated twice, albeit the second time refers to an undefined 'area'. This is unnecessary and, in the interests of clarity, the requirement should be corrected to require the restoration of the Land to its former condition as pasture, by replacing topsoil and reseedling the ground as appropriate with a mix of meadow grass seed. These minor corrections are in the interests of clarity. They would not affect the operation or purpose of the Notice and, therefore, no injustice would arise.

Ground (c)

6. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. On this ground, the onus is on the appellant to prove their case to the standard of the balance of probabilities. The main thrust of the appellant's case is that the activities have not resulted in a material change of use of the land, but also that some aspects may be 'permitted development' having been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").
7. The appellant has indicated that in 2017, the Council determined that the storage of boats on part of the Land did not constitute a breach of planning control. While that may have related to a private storage function, there is little detail as to what was going on at that time and, in any event, it is not the same as the matters alleged now. Therefore, whether or not previous activities undertaken on the Land were a breach of planning control has little influence on whether the presently alleged activities are a material change of use.
8. The growing of trees and biomass may sometimes constitute agriculture. Moreover, in some scenarios, trees on agricultural land may be felled or pruned with timber kept there until taken away, sometimes in piles. However,

that is not what is going on here. The timber at the appeal site may have originated on agricultural land, but the appellant is collecting felled timber from elsewhere and bringing it to the site. It is then being stored and processed into biomass for personal use at the appellant's home, some distance away. It has not been shown why that should be regarded as being within the meaning of agriculture as defined in Section 336 of the 1990 Act.

9. I understand that the appellant's home, like many others, does not offer sufficient space to process the material into manageable sizes. However, even if such processing could be incidental to the enjoyment of a dwellinghouse if space allowed it to be carried out there, the Land is not connected with a residential dwelling.
10. It may be that most of the timber is at the site in an unprocessed state, more akin to its condition when removed from the source site. However, collecting it together in one place and keeping it on the Land, which is unconnected with an agricultural enterprise, for private domestic purposes, is materially different to if it were simply left where initially felled.
11. In addition to the timber, there is some machinery at the site. Some of this has an agricultural character, such as a tractor and trailers. If they were deployed in agricultural activity, then keeping them on agricultural land might be part and parcel of that use. However, in the absence of any demonstration of agricultural activities at the site, I find it more likely than not that the machinery is on the Land in connection with the timber storage and processing use alleged. Its presence contributes to the materiality of the change of use.
12. The GPDO grants planning permission for land to be used for some activities for up to 28 days per year. The evidence suggests that it is more likely than not that the appellant does not cut timber at the site for more than 28 days per year. While they have not provided any formal record of this, it does seem to accord with evidence provided by interested parties whose documentation of such activity on the land does not exceed 28 occasions per year.
13. However, the Notice alleges a mixed use of the Land for timber cutting and processing as a single use, rather than separate activities. The allegation appears to be correct in this regard as it seems that the timber is only on the Land waiting for an appropriate time for it to be cut and processed before being moved elsewhere. As a single use, that activity, as well as the storage of associated machinery, appears to take place throughout the year. Although the appellant may be willing to restrict all activity to 28 days per year, that has not been shown to be what has happened. Therefore, I find that the mixed use alleged has occurred for more than 28 days per year and so does not benefit from any planning permission granted by the GPDO.
14. With regard to the above, it has not been shown, on the balance of probabilities, that the use alleged is not a breach of planning control. Therefore, the appeal on ground (c) must fail.

Ground (a)

15. Ground (a) is that planning permission should be granted for the matters alleged. The reasons given for issuing the Notice indicate that the main issue is the effect on the character and appearance of the area.

16. The site is close to a small number of dwellings, but is otherwise in a rural location, surrounded by undeveloped countryside. It is at the edge of land with a heathland appearance and has a visual affinity with the agricultural fields that otherwise surround it and much of the adjoining area.
17. The storage of a small amount of timber may appear similar to general land management activities and not be particularly out of kilter with an agricultural appearance. However, the machinery placed thereon is. At the time of my site visit, there were glimpses of some of the machinery from the footpath alongside the site through a relatively open boundary to neighbouring land. Such is detrimental to the undeveloped appearance of the site and the contribution that it would otherwise make to the agricultural surroundings. It may well be that the machinery is incidental to the use, but there is no reason to believe that it would be on the Land were it not for the unauthorised use.
18. In any case, while not all of the site and machinery was visible from outside the Land, any success on ground (a) would permit the mixed use, including storage on a greater scale, across the whole of the Land identified in the Notice. Other than the ground conditions, which I understand to be unfavourable in some places, there would be no control over where the activities took place on the land, or to what extent. As such, permitting the use alleged would result in harm to the character and appearance of the area, in conflict with those aims of Policies CO and D of the Purbeck Local Plan Part 1 2012 that seek to ensure that development makes a positive contribution to landscape character and positively integrates with its surroundings.
19. I understand that the appellant heats their home solely from timber stored and processed at the site and is unable to store sufficient timber at their home address for this purpose. However, that has not been shown to be a particularly unusual circumstance, so as to justify the introduction of the use into a countryside location, remote from that home. It is suggested that storing the timber and equipment close to the timber source may reduce transportation and associated pollution. However, as it is not ultimately used in this location, that claim is unsubstantiated by evidence.
20. I, therefore, find that the proposal conflicts with the development plan and material considerations do not indicate otherwise that permission should be granted. Accordingly, I find that planning permission should not be granted for the matters alleged in the Notice and the appeal on ground (a) should fail.

Ground (f)

21. The purpose of the Notice is to remedy the alleged breach of planning control. In that context, an appeal on ground (f) 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 alleged.
22. The fourth requirement (as corrected) requires restoration of the Land to its former condition as pasture, by replacing topsoil and reseeding the ground as appropriate with a mix of meadow grass seed. It is not clear how the Council has ascertained that this is the previous condition of the Land, especially as the appellant suggests that it has been used for storage in a way that did not create a material change of use for some time.

23. While there is no substantive evidence from either party to the previous condition of the land, it would be sufficient for the Notice to simply require a return to that previous condition, before the breach of planning control took place. Such would ensure that the Notice did not go beyond remedying that breach. I, therefore, find that the Notice should be varied such that the fourth requirement simply requires restoration of the Land to its former condition.
24. The third requirement could be construed as preventing the bringing of any equipment onto the land in the future. It seems unlikely that any of the items currently on the land would be there if it were not for the mixed use and so it is a legitimate requirement for them to be removed. However, for the avoidance of doubt, the requirement should be varied to clarify that it is the items associated with the mixed use that should be removed and to ensure that, in the future, items associated with lawful uses are not permanently excluded.
25. The appellant suggests that the requirements would prevent the cutting and processing of trees or hedges on the Land, or the storage of items legitimately connected with a lawful use of the Land. However, as corrected, the Notice would not prevent legitimate land maintenance activities, or any other lawful use of the Land. It would only require the mixed use to cease.
26. Therefore, other than in respect of the previous condition of the Land, I find that the steps required to be taken do not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f), therefore, succeeds in part to the extent that the Notice is varied as set out in my formal Decision, but the Notice is upheld.

Formal Decision

27. It is directed that the enforcement notice is corrected and varied by:

In Section 5 'What you are required to do':

- Delete the text in its entirety and replace with
 - (i) Permanently cease the mixed use of (a) storage, and (b) timber cutting and processing.
 - (ii) Remove from the Land all timber, vehicles, plant, machinery and equipment on the Land associated with the mixed use.
 - (iii) Restore the Land to its former condition before the breach of planning control took place.

28. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Bale

INSPECTOR