



Appeal Decisions

Site visit made on 10 December 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Appeal A Ref: APP/Q1153/C/24/3350891

Appeal B Ref: APP/Q1153/C/24/3350892

Land at SX539036, Passaford Meadow, Passaford Lane, Hatherleigh, Devon, EX20 3LT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Victoria Bonass and Appeal B by Mr Stephen Whitehead against an enforcement notice issued by West Devon Borough Council.
 - The notice was issued on 1 August 2024.
 - The breach of planning control as alleged in the notice is without planning permission:
 - (i) the change of use of the land from agriculture to a mixed use of residential and use as a campsite;
 - (ii) to facilitate the residential use the siting of a timber residential building and associated timber shed shown outlined in blue on the attached plan in association with the unauthorised residential use; and
 - (iii) to facilitate the use as a campsite the siting of a yurt with a wooden latticed entrance structure and separate wooden bathroom toilet/building outlined in green on the attached plan and the construction of a further timber structure with toilet and wash area outlined in purple on the attached plan in association with the unauthorised use as a campsite.
 - The requirements of the notice are to:
 - 1 Cease the residential use of the land.
 - 2 Remove the timber residential building and the associated timber shed outlined in blue on the attached plan from the land.
 - 3 Cease to use the land for tourism.
 - 4 Remove the yurt and the wooden latticed entrance structure and separate wooden bathroom/toilet building outlined in green on the attached plan and remove the timber structure with toilet and wash area outlined in purple on the attached plan from the land
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeals were originally made on grounds (a), (c) and (f). However, where an enforcement notice is issued on or after 25 April 2024, no ground (a) appeal can be made if the enforcement notice was issued within the time allowed for determination of the retrospective planning application or within two years of the date on which the related application ceased to be under consideration.
3. As the enforcement notice was served on 1 August 2024 and came into effect on 30 August 2024, it was within two years of application 4117/22/FUL (part retrospective) ceasing to be under consideration, as it was determined on 28 March 2023.

4. Accordingly I have determined these appeals on grounds (c) and (f) alone and the planning merits do not fall to be considered.

The site and relevant planning history

5. The site is an area of pastureland of about 2.8 hectares in area in the open countryside.
6. Following complaints about the unauthorised residential use of the land in May 2020, the Council provided pre-application advice to the appellants but in December 2021, permission was refused for a retrospective application for temporary permission to live in a cabin and erect a greenhouse and polytunnel (0973/21/FUL.
7. Application 4117/22/FUL (part retrospective) for a low impact campsite with related facilities was refused in March 2023 but officers noted that the cabin facilitating the residential use of the land had been destroyed by fire. Additionally a timber base had been constructed for the erection of a yurt for which planning permission was required.
8. In response to a Planning Contravention Notice (PCN) served in June 2023, it was confirmed that the land was being used residentially and as a campsite for tourism, that the yurt was sited in April 2023 and the toilet shed in March 2023. A timber structure providing toilet and wash facilities to serve campers and a storage shed had also been erected between July 2021 and June 2022.
9. In February 2024, the Council noted that a larger timber building had been erected on the site of the previous building destroyed by fire. The owners confirmed in a further PCN that it had been erected between July-October 2023, had six rooms and was being utilized as a dwellinghouse.
10. At the time of my visit the site contained a new single storey dwelling clad in timber and having a metal sheet roof construction; a toilet shed; a base for the yurt which had recently been destroyed through storm damage although the entrance structure remained; and the toilet/washing facility for campers.

The appeal on ground (c)

11. An appeal on this ground is that there has not been a breach of planning control. This is a legal ground where the onus of proof rests with the appellants and the standard of proof is on the balance of probabilities
12. The appellants state that the use of land for camping to be undertaken for up to 60 days per calendar is permitted development.
13. Part 4, Class BC of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended, was introduced on 26 July 2023 to allow for temporary campsites on land for not more than 60 days in any calendar year. The campsite is limited to no more than 50 pitches and includes any moveable structures reasonably necessary for the purposes of the permitted use, which could include toilet and waste disposal facilities. However, such development is permitted subject to conditions, one of which requires the developer to notify the local planning authority in writing before the commencement of development in each calendar year, providing a copy of the site plan and particulars of waste disposal and dates of use.

14. No such notification has been made and planning permission does not exist for a camping use, or for that matter, for residential use of the site.

15. The appeal on this ground fails.

The appeal on ground (f)

16. An appeal on this ground is that the steps required to comply with the requirements of the notice are excessive and that lesser steps would overcome the objections.

17. The appellants contend that the removal of the timber dwelling goes further than is necessary to reasonably prevent the breach of control that mainly comprises the use of the site for camping and the residential occupation of the dwelling. It is claimed that the building could be adapted and used for agricultural or horticultural use ancillary to the use of the land and that it would be wasteful to do otherwise. It is requested that the notice be amended to require cessation of the residential use and camping with the removal of the yurt.

18. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.

19. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with, including the pursuance of the prior notification procedure for permission to use the site for up to 60 days in the year for camping.

20. The appeal on this ground fails.

Human Rights Act 1998 and Equality Act 2010

21. The appellants refer to Article 8 of the Human Rights Act 1998 in that enforcement action interferes with the private and family life and would be contrary to the Act as the appellants have been living on the site for five years without any adverse consequences that would reasonably require action for the reasons described in Article 8-2 of the Act.

22. I have had due regard to the Human Rights Act 1998 and to the Public Sector Equality Duty set out under the Equality Act 2010. The harm caused by the unauthorised development to the character and appearance of the open countryside outweighs any personal benefits to the appellants through the conversion of the building to an alternative use as the building was not designed or erected for agricultural purposes. The requirements of the notice represent a proportionate response to the harm caused and to protect matters of public interest.

23. Conclusion

24. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

P N Jarratt

INSPECTOR