



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2025

Appeal Ref: APP/A2335/C/24/3349453

Land off Littlefell Lane, Lancaster (known as Blossom Tree Campsite)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(The Act). The appeal is made by Mr Anthony Gardner against an enforcement notice issued by Lancaster City Council.
- The notice was issued on 8 July 2024.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of Development associated with camping activities on the Land, including hard standings and tracks, electric hook up points, standalone solar panels, waste disposal facility, modified containers to form utility blocks, outbuildings/structures and alterations to land levels to create terracing. (the Development).
- The requirements of the notice are to:
 - (a) Remove the terraced areas (labelled A, B and C) and associated steps (Circled in red), shown within Appendix B, and reinstate the Land to its previous sloping topography, completing with re-seeding or turfing.
 - (b) Remove all electric hook up points, including but not limited to those which are shown within Appendix C, from the Land.
 - (c) Remove the freestanding solar panels, shown within Appendix D, from the Land.
 - (d) Disconnect and remove waste disposal facility (sewage or other tanks) from the Land.
 - (e) Remove all containers their contents, connections, screening and associated paraphernalia, from the Land, including the modified containers that form the utility block (Unit 1), the container used as the 'reception' (Unit 2), and the container adjacent to the existing agricultural building (Unit 3) shown within Appendix E.
 - (f) Remove the metal framed structure, shown within Appendix F including all that is stored within, from the Land.
 - (g) Remove the wooden pod building, shown within Appendix G including all that is stored within, from the Land.
 - (h) Remove all areas of hardstanding and tracks, (highlighted in pink on appendix H) on the Land and reinstate the areas by levelling, re-seeding /turfing.
 - (i) Remove from the Land all the resultant debris and materials arising from steps (a) – (h) above and restore the Land to its previous condition by re-seeding or turfing.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected at section 5 by:
 - The deletion of the words 'all' and 'screening and associated paraphernalia' and insert ', ' and 'and' so that requirement (e) says 'Remove containers, their contents and connections from the Land, including the modified containers that form the utility block (Unit 1), the

container used as the 'reception' (Unit 2), and the container adjacent to the existing agricultural building (Unit 3) shown within Appendix E.'

- The deletion of requirement (g).
 - The deletion of the word 'on' from requirement (h) so that requirement (h) says 'Remove all areas of hardstanding and tracks, (highlighted in pink on appendix H) from the Land and reinstate the areas by levelling, reseeded/turfing.'
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant raises a number of concerns regarding the notice and suggests that the alleged breach includes a number of inaccuracies that have in part never occurred or are exempt from enforcement action. Since these matters concern whether the breach has occurred as a matter of fact, whether they constitute a breach of planning control and whether they are immune from enforcement action, I shall deal with the matters raised under grounds (b), (c) and (d).
4. During my visit, I saw that a number of matters identified in the breach have been removed. Though I make no judgement as to whether the requirements have been met in full, it is suggested that the appellant has addressed the following items:
- Removed the steps
 - Disconnected and removed waste disposal facility (sewage or other tanks) from the land;
 - All non-lawful hardstanding and tracks have been removed and the land re-seeded;
 - Removed all electric hook up points, including but not limited to those which are shown within Appendix C, from the land
 - Removed all containers (excluding unit 3) their contents, connections, screening and associated paraphernalia from the land, including the modified containers that for the utility block (Unit 1), and the container used as the 'reception' (Unit 2);
 - Removed the metal framed structure shown within Appendix F including all that is stored within, from the land; and
 - Removed the wooden pod building, shown within appendix G including all that is stored within, from the land.

Matters concerning the notice

5. The enforcement notice alleges operational development, not a material change of use. During the hearing I clarified this with the parties. I raised in a pre-hearing note whether it was necessary to include reference to the camping use within the enforcement notice allegation. The appellant advised that they do not consider the notice could be corrected to remove reference to the camping use without causing injustice since their appeal under ground (b) is

advanced on the basis that certain matters which are alleged are not used in connection with the camping use and therefore these matters have not occurred as a matter of fact.

6. This matter was discussed at length with the parties during the hearing and, in my judgement, the notice cannot be corrected without causing injustice, nor do I consider it necessary, since the notice is not, in my view, invalid. It is clear from the four corners of the notice what the appellant has done wrong and what they must do to remedy it.
7. I raised with the parties whether the notice was excessive at 5.1(e), in requiring 'screening and associated paraphernalia' to be removed. The Council agreed that these parts of the requirement can be deleted and, since it would narrow the scope of the requirements, I consider this can be done without causing injustice. I shall also make a minor correction to 5.1(h), so that it says 'from the land' not 'on the land'. The parties agreed this could be done without causing either party injustice.

Ground (b)

8. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred as a matter of fact. In a legal ground of appeal, such as (b), (c) or (d), the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'.
9. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. To succeed in this ground of appeal, the appellant would need to show, on the balance of probabilities, that by the date of issue of the enforcement notice, the alleged works had not occurred as a matter of fact. It is not disputed that the solar panels, track/hardstanding and Unit 3 have been erected and/or constructed within the site.
11. The main thrust of the appellant's case is that the solar panels, part of the access track/hardstanding and Unit 3 are not used in association with the caravan use and given the wording of the alleged breach, which refers to 'Development associated with camping activities on the Land' are therefore not attacked by the notice.
12. The appeal site comprises a substantial area, with an agricultural style building which was used to accommodate cows at the time of my visit, an area for the keeping of chickens and areas for the siting of caravans. There is no delineation between the agricultural activities within the site and the camping activities. The appeal site is in single occupation and, given there is no physical delineation between the camping and agricultural activities, I consider it is a single planning unit which is in a mixed use.
13. The appellant advised during the hearing that the solar panels are connected to the agricultural building (which is not attacked by the notice) and provides electricity for lighting, as well as electricity for electric fencing. Unit 3 is also said to be used for agricultural purposes and, during my visit I saw that it is used for the storage of hay, cattle feed and batteries for the solar panels.

14. There was suggestion during the hearing that Unit 3 was brought to site prior to any of the other structures and that it was used as an 'overflow shed', for agricultural purposes. However, the evidence provided by the Council counters this. The Council advise that the container was first pictured in this position on 9 December 2021 and has remained in this position. Unit 3 is not evident in pictures taken by the Council on 11 May 2021, during which significant earth works were being carried out, or in aerial photographs provided by the Council, dated 2018 and 2019.
15. The Council has provided a photograph of Unit 3, which shows that posters were previously affixed to the side of the structure. A length of lights also ran from the agricultural building, connected to Unit 3, to provide lighting for users of the camping, so that they could make their way from the bins in the dark. While these items were not placed inside the Unit, they were nonetheless affixed to the Unit in connection with the camping use.
16. The Council officer confirmed during the hearing that they did not look inside Unit 3 prior to taking enforcement action and no planning contravention notice appears to have been issued to establish how the different structures within the site have been used. Nevertheless, given the affixation of posters and lighting to the Unit in connection with the camping activities, it appears likely, on the balance of probabilities, that Unit 3 has been used in connection with both the agricultural use and the camping use. Consequently, the appeal under ground (b) fails in relation to Unit 3.
17. The appellant suggested during the hearing that the solar panels have been erected in connection with the agricultural activities and not the camping use, and that they would not meet the energy requirements of the camping use. It was suggested that there was a generator, though this has now been stolen, which provided electricity to the camping activities.
18. During the winter, I accept that the amount of energy that the solar panels would generate is likely to be limited and so an alternative energy source for the camping activities is likely to have been necessary. However, during the summer, it is likely that the energy generated would exceed what is necessary to power the agricultural activities within the site and is likely to have been used to power the camping activities in some way, even if an alternative power source was present.
19. I am therefore not persuaded that the solar panels have not been used in association with the camping activities and since they have been erected within the site, the appeal under ground (b) must fail in this regard.
20. The appellant states that part of the track/hardstanding has always been onsite, appendix H is incorrect and that this was clearly marked on the site plan submitted for application reference 21/01141. The suggestion being that the laying and formation of tracks and hardstanding, in part, has not occurred as a matter of fact. However, where the suggestion is that something has been there for a considerable period of time, this is a matter which should be considered under ground (d), rather than (b).
21. There is no delineation between the different parts of the site and, as set out above, I consider the appeal site is in mixed use. As a result, all of the tracks and hardstandings are likely to have been used in association with the camping activities. The photographs provided by the Council, at Appendix 1 of

its Statement of Case, show what appear to be significant quantities of hardcore having been and being laid within the site on 11 May 2021. Since these works were undertaken at a similar time to the creation of the terraces, it seems likely they were done to facilitate the camping use.

22. For the reasons given above, I find that the alleged breach has occurred as a matter of fact and so the appeal under ground (b) must fail.

Ground (c)

23. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that the solar panels, shipping containers and temporary structures and terracing are not development and that, as the campsite has a licence, temporary ancillary structures have been placed on the land as required.
24. The appellant does not suggest the waste disposal facility or electric hook up points would not constitute a breach of planning control and since they have been removed from site, there is no need for me to consider these elements of the breach further.

Terracing: whether development

25. The appellant asserts that the ground works to create the terracing and associated steps do not amount to development. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.
26. The earthworks that have been carried out are substantial and, from the evidence, appear to have been created using machinery. The soil has been shaped to create tiers within the site, upon which caravans can be located. This would have involved an element of pre-planning, whether by an engineer or not. While no material may have been imported (or exported) to create the tiers, they do not appear to be a natural landform.
27. Therefore, as a matter of fact and degree, I consider they constitute an engineering operation and are therefore development for the purposes of the Act. It is not suggested that the works would be permitted development, and given their extent and scale, I do not consider they would be *de minimis*¹. They are development for which planning permission is required and since none has been granted, they constitute a breach of planning control. Consequently, with respect to the terracing, the appeal under ground (c) must fail.

Solar panels: whether development and if so, whether Permitted Development

28. The appellant suggests that the solar panels are simply set on the ground and that the *de minimis* nature of the works means that there is no operational development. During the hearing, the appellant explained that the solar panels have stayed in the same place, except when they blew over. The structure comprises of panels and a framework, which is separate, and which were

¹ A Latin term, meaning that it is on too small a scale for the law to take account of it.

delivered separately to the panels. The appellant welded the framework together onsite and knocked it into the ground, dropped the panels in and screwed them in.

29. The solar panels are substantial in size and have been fixed into the ground using metal poles. The framework was constructed on site and whilst it was done by the appellant, they clearly had sufficient skill to weld the metal into a frame for the panels. While the solar panels could be removed relatively quickly, from the evidence, it seems that the solar panels have been located within the same place for a considerable period of time.
30. Furthermore, they are unlikely to be moved around the site, given the need to connect them to the batteries stored in Unit 3. Indeed, the appellant advised during the hearing that they did not intend to move them. Given the size and quality of permanence that the solar panels have, I consider they are buildings for the purposes of the Act.
31. Part 14 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits, Part 14, Class K permits the installation or alteration etc of stand-alone solar equipment on non-domestic premises. However, the solar panels which have been erected would exceed the limitations set out in the GPDO.
32. The solar panels are development for which planning permission is required and since none has been granted, they constitute a breach of planning control. Consequently, with respect to the solar panels, the appeal under ground (c) must fail.

Shipping containers and other structures: whether development

33. The appellant suggests that the shipping containers have no annexation to the ground and thus form chattels. They can be moved without being dismantled and have been placed on trailers. Although a number of the structures have been removed from the site, the appellant made it clear during the hearing that they wish to bring them back and so wish me to consider them under the ground (c) appeal.
34. The main characteristics of a building are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.

Unit 1

35. Unit 1 comprised a number of containers, with a piece of 4x2 timber, which the appellant explained during the hearing that they bolted to the top of the containers, creating a single unit. The appellant explained during the hearing that the containers came in 3 parts, with legs that can drop down to make the container level.
36. Although a shipping container can usually be moved, linking the containers together in this way means that the containers are highly unlikely to be moved with any regularity, since it would be necessary to un-bolt the timber from the top. Indeed, the appellant explained during the hearing that the Unit stayed in the same position for around 2 years. The effect of the works, in my view, was to create a single building. I therefore find that Unit 1 is a building for the purposes of the Act.

Unit 2

37. Unit 2 comprises a container of substantial size. At the time of my visit, the Unit was located on a trailer, which was on wheels. The appellant explained during the hearing that the Unit has moved 'a couple of times' throughout its time at the appeal site and that the first year it was on site it was sat on a trailer. The Council suggests the Unit was located on a platform and did not move once it had been sited there and remained there when the notice was served. The Unit is stated to have had an electrical supply and so while it would have rested under its own weight. Furthermore, from the evidence it seems it was used as a reception for the camping activities. Once set in place it is unlikely to have moved to any significant extent.
38. Unit 2 is of sufficient size to be of significance in terms of its visual impact and remained in place for sufficient time to have the quality of permanence. As a matter of fact and degree, I therefore consider Unit 2 is a building for the purposes of the Act.

Unit 3:

39. The appellant explained during the hearing that Unit 3 is a waggon back, and that it was lifted into place from the bottom with a machine. The Unit is located next to the agricultural building and appears to rest under its own weight. The evidence points towards the Unit having been located in the same place for a number of years. Although it may be possible to move the Unit, given it contains the batteries for the solar panels, it is unlikely to be moved with any regularity. The Unit has the quality of permanence and in my view is a building for the purposes of the Act.

Metal framed structure: Appendix F

40. Appendix F was a free standing marquee which measured around 10m by 6m. The appellant explained that it was brought to site in a box and that they put it together, in around 4 or 5 hours. The appellant suggests that it did move slightly and that they lost one of the sheets during gales and had to get another one. The appellant fixed a flue and log burner to the marquee, along with 3 sheets of plywood.
41. The marquee would have been of sufficient size to be of significance in terms of its visual impact and remained in place for sufficient time to have the quality of permanence. As a matter of fact and degree, I consider the marquee was a building for the purposes of the Act.

Wooden pod: Appendix G

42. The appellant explained that the wooden pod was brought to the site on a trailer and measured 3m by 2.7m and has water and electricity connections. The appellant explained that the pod is their 'outdoor kitchen' and that they use it to make pizzas for the camp site.
43. The appellant advised that the pod has left site and come back 'lots of times' and will use it at home if having a barbeque, or lend it to friends. The pod is shown in different positions within the photographs provided by the Council, which supports the appellant's suggestion that the pod is moved with some frequency.

44. Although the wooden pod is of sufficient size to be of significance in terms of its visual impact, as it has been moved with a degree of regularity, it does not have the quality of permanence. In my view, on the balance of probabilities, the wooden pod is not a building and so the appeal under ground (c) succeeds in this regard.

Whether the buildings would be granted by the GPDO

45. Permission to use the land as a caravan site and recreational campsite has been permitted through a certificate exemption granted by the Freedom Camping Club, a certified exempted organisation. Part 5, Class A of the GPDO permits the use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2. Paragraph A.2 Interpretation of Class A, states the circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required), but in relation to those mentioned in paragraph 10 do not include use for winter quarters.
46. Paragraph 5 of Schedule 1 to the 1960 Act concerns sites approved by exempted organisations and provides that an exempted organisation may certify certain caravan sites for use by its members for the purposes of recreation, for a period in each case of up to one year. Up to 5 caravans may then be stationed for the purposes of human habitation on the land without a site licence or (by virtue of this Part) planning permission.
47. Attached to the exemption certificate is a series of terms and conditions. The appellant suggests that as part of the certificate obligations, it is a requirement for the appellant to provide toilet and welfare facilities for holiday makers staying at the site. However, while the terms and conditions require facilities to be signposted, it does not require them to be provided. Furthermore, the exemption does not constitute a site licence and so permitted development rights afforded by Part 5, Class B, which permits development required by the conditions of a site licence for the time being in force under the 1960 Act, would not apply.
48. Thus, with the exception of the wooden pod, which I have found is not a building for the purposes of the Act, the buildings erected within the appeal site are development for which planning permission is required and since none has been granted, they constitute a breach of planning control. Consequently, the appeal under ground (c) must fail in this regard.

Hardstanding and tracks

49. It was suggested during the hearing that the tracks and hardstanding benefit from agricultural permitted development rights. However, although the site is in agricultural use, it is also used for camping and so is in a mixed use. Furthermore, even if the site benefitted from permitted development rights under Part 6 when the works were carried out, there is no suggestion that the appellant applied to the local planning authority for a determination as to whether prior approval is required.
50. Part 9, Class E of the GPDO permits the carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way. While the appellant suggests that there was a historic track, given the extent of the works, which

were extensive and unlikely to have been limited to the boundaries of a historic private way, it seems very unlikely the works would have been permitted by this part of the GPDO.

51. The Council raised concern regarding the appellant's introduction of a new matter late in proceedings. Given the Council's concerns, the appellant did not pursue this matter further during the hearing. Nevertheless, for the reasons given above I consider it unlikely the tracks or hardstanding would have been granted by the GPDO when it was constructed.
52. Thus, I conclude that the appeal under ground (c) should succeed in relation to the wooden pod only. The appeal under ground (c) fails in respect of the other matters stated in the notice. I shall correct the notice to delete the requirement to remove the wooden pod. The appeal under ground (c) succeeds to that extent.

Ground (d)

53. An appeal under ground (d) is made on the basis that, at the date when 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. The main thrust of the appellant's case under ground (d) is that some of the tracks have been on site for a number of years and are therefore immune from enforcement action. Since the enforcement notice was issued on 8 July 2024, the appellant will need to show, on the balance of probabilities, that the track was substantially completed on or before 8 July 2020.
54. The appellant accepts that sections of track have been undertaken within the last 4 years. However, it is asserted that there are historic sections of track which are immune from enforcement action. To support their case, the appellant has provided a number of statutory declarations, which refer to drawing number SP01.
55. Drawing number SP01 outlines where tracks and hard standings are within the site and includes labels such as 'Existing stone track with stone added to surface and top-dressed with soil and grass' and 'New stone track top-dressed with soil and grass' and 'New stone hardstanding area top-dressed with soil and grass to form storage area for winter fodder'. It is not clear from the drawing exactly which parts of the land the labels relate to, or the extent of stone which was added to existing tracks. In this regard, I find the plan and the statutory declarations which rely on it, to be ambiguous.
56. The appellant sought to explain during the hearing which parts of the track were historic. However, from the evidence, it appears that these areas of track/hardstanding have been laid more recently. Within an aerial photograph provided by the Council, dated 30 June 2018, there appears to be a disturbed ground leading to the agricultural building. A Google Streetview image, dated 2009, shows what appears to be hardcore near to the roadside gate, pointing towards there having been some sort of track.
57. The extent of the track prior which is evident in the site in 2018 and 2019, including width and material used, is significantly different to that which was *in situ* when the enforcement notice was served. Even if some remnants of an historic track remained, they have been incorporated into the new track/hardstandings. Photographs taken by the Council in May 2021 show that

the tracks and hardstanding had not been substantially completed by this date and so, the appeal under ground (d) must fail.

Conclusion

58. For the reasons given above, I conclude that the appeal under ground (c) succeeds in respect of the wooden pod only and so I shall correct the notice to delete requirement (g). Otherwise, I find that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jacob Salisbury	Agent
Anthony Christopher Gardner	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Clement	Senior Planning Officer
Alicia Gerrard	Enforcement Officer
Debbie Threlfall	Senior Planning Enforcement Officer

DOCUMENTS SUBMITTED DURING THE HEARING

1. Contour Plan