The Planning Inspectorate

Appeal Decisions

Site visit made on 11 November 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2020

Appeal Ref A: APP/L3245/X/19/3221405
Plas Issa, (New Barn Junction to Junction Trefonen Hall) Trefonen, Oswestry SY10 9DS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Gary Andrew Anderson against the decision of Shropshire Council.
- The application, Ref 18/02855/CPL, dated 19 June 2018, was refused by notice dated 16 October 2018.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as the temporary siting of a caravan while internal building and engineering works are carried out on agricultural barns.

Appeal Refs B and C: APP/L3245/C/19/3221786/7
Land at Plas Issa, Trefonen, Oswestry SY10 9DS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Gary Andrew Anderson (Appeal B) and Mrs Natalia Romanova (Appeal C) against an enforcement notice issued by Shropshire Council.
- The enforcement notice was issued on 7 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed agriculture, residential and domestic storage use, by way of siting and occupation of a static caravan, installation of septic tank, marked approximately on the plan attached to the notice by "X" and "Y" respectively, and the storage of domestic cars.
- The requirements of the notice are:
  - Cease the occupation of the Land for residential and domestic storage purposes;
  - Remove entirely from the Land the static caravan (situated in the approximate position "X" on the plan attached to the notice) and gas cylinders;
  - Remove entirely from the Land the septic tank (situated in the approximate position "Y" on the plan attached to the notice) and all associated drainage pipes connected to the static caravan;
  - Remove from the Land domestic cars which are not stored in connection with the permitted agricultural use; and
  - Restore the Land to a condition had the alleged breach of planning control not taken place.
- The period for compliance with the requirements is 10 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A

1. The appeal is dismissed.

Appeals B and C

2. It is directed that the enforcement notice be corrected by the deletion of the allegation and the substitution with "Material change of use of the land from agriculture and B1 business use to a mixed use for agriculture, B1 business use, residential (by way of the siting and occupation of a static caravan and the installation of a septic tank) and the storage of cars". Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Appeal A, Procedural Matter

3. The application was made under section 192(1)(a) of the Act for a proposed development but it is clear from the application form that the development had already taken place. The Council therefore considered the application under sections 191 and 192 of the Act. The appellant has submitted his appeal on the basis of a section 192 development that had already started. I shall proceed on the basis that the question being posed is whether the temporary siting of a caravan for residential purposes is lawful.

Main Issue

4. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded.

Reasons

5. The appellant is the owner of a small holding amounting to 5.2 hectares, where he keeps goats. At one end there is a group of farm buildings and between these buildings and the road a caravan has been sited, which is being used for residential purposes. One farm building is detached but the others abut each other, though they are on different levels, due to the lie of the land.

6. The appellant submits that express planning permission is not required for his development as it is permitted development (PD) in accordance with Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This is because he says he is carrying out "building and engineering" work, namely the replacement of the roofs of several agricultural buildings, which were lost in hurricanes in recent years; the laying of a concrete floor over dirt floors within some of the barns; and internal building works necessary to complete the change of use of an agricultural barn of 124sqm to R Class, B1 business use.

7. Part 5 of the GPDO sets out PD for caravan sites and recreational caravan campsites. Class A deals with the use of land as a caravan site and permits the use of land, other than a building, as a caravan site in particular circumstances. These circumstances are listed in paragraph A.2 by reference to paragraphs 2- 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (the 1960 Act). Schedule 1 sets out cases where a caravan site licence is not required.

8. The appellant relies on paragraph 9 of Schedule 1 to the 1960 Act. This states a site licence shall not be required for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out, "being operations for the carrying out of which permission under Part III of the Town and Country Planning Act 1947 (the 1947 Act) has, if required, been granted". This is on the basis that use is for the accommodation of a person employed in connection with the said operations.

9. Paragraph 9 is subject to the provisions of paragraph 13 of Schedule 1 to the 1960 Act. This deals with the situation where on an application made by a local planning authority, the Minister may remove the permissions given by paragraphs 2-10. The Council make no reference to this but have proceeded on the basis that in this agricultural area, paragraphs 2-10 are still in place and, in the absence of any other information, I shall proceed on that basis.

10. The caravan is sited on the land where the building and engineering operations are said to be taking place. This second requirement of paragraph 9 is therefore met. However, the "building and engineering operations" requirement is not met. This is because the "operations" in paragraph 9 have to be operations amounting to development for which planning permission shall be required. Part III paragraph 12 of the 1947 Act states that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change of use in the use of any buildings or other land.

11. It is considered that the "building and engineering operations" described by the appellant do not amount to development and in Section 7 of the application form he refers to them as "repairs and maintenance". I find that replacing a roof after storm damage is a repair and upgrading the floors of the barns from a dirt surface to a concrete surface would be maintenance. In addition, internal building works that would not affect the external appearance of the building would also not fall within the definition of development stated in the 1947 Act, (which is carried forward in the 1990 Act). This is on the basis that they would not result in a material change of use of a building. In this instance, the appellant has been given an LDC in 2018, reference 18/02588/CPL, to use one of his barns for a flexible commercial use under Class R of the GPDO. The appellant is choosing to use it for Class B1 business purposes and has constructed a room from plywood in the middle of the barn, which is laid out as an office.

12. It would appear that the appellant believes his operations amount to PD, notwithstanding his own reference to them being repairs and maintenance, as he submits the size of his holding means he enjoys particular PD rights under Part 6, Class A of the GPDO. On agriculture units of 5 hectares or more it is PD to carry out works for the erection, extension or alteration of a building or any excavation or engineering operations.

13. However, even if the appellant's operations did amount to development, he cannot exercise or rely on his PD rights under Part 6, Class A until he has complied with a significant number of conditions such as seeking the prior approval of the Council. On the basis of the information before me from the Council, it would appear that these conditions have not been discharged.

14. He also cannot rely on the PD rights set out in Part 4 of the GPDO, to which he makes reference when responding to the Council's comments. This is because

these rights may only be exercised in situations where planning permission has been granted for the operations. That is not the case here.

15. For all these reasons it is considered that the temporary siting of a caravan for residential purposes, in the circumstances described by the appellant, would not be lawful as the development would not comply with Part 5, Class A of the GPDO.

Appeals B and C, The Notice

16. A notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case the allegation is, without planning permission, the change of use of the land to a mixed use. The mixture of uses listed are agriculture, residential (the siting and occupation of a caravan and the installation of a septic tank) and the storage of domestic cars.

17. The appellants state that the allegation omits reference to Class R, use for B1 business purposes in the small barn, which had been implemented by the time the notice was issued. They also state that the notice fails to specify the location of the domestic car storage.

18. In the first instance, the notice ought to describe the development as a material change of use, as a change of use is not development within the meaning of section 55 of the Act. It should also have referred to the B1 business use, as the Council are required to list all the uses taking place and in dealing with these sorts of breaches, it is usual for a Council officer to visit the site just before the notice is issued to make sure the notice states all the uses taking place on the land. However, both of these omissions do not invalidate the notice and can be corrected without causing injustice to the appellants.

19. Secondly, whilst the Council marked the approximate location of the caravan and septic tank on the plan accompanying the notice, a lack of a similar reference for the storage of cars does not invalidate the notice. It is sufficient that the notice specifies[1] the address of the site and is accompanied by a plan which sets out the precise boundaries of the land to which the notice relates.

20. I will therefore proceed on the basis that the allegation is the material change of use of the land from agriculture and B1 business use to a mixed use for agriculture, B1 business use, residential (by way of the siting and occupation of a static caravan and the installation of a septic tank) use and the storage of cars.

Ground (c)

21. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. In addition to the caravan discussed in Appeal A, the appellants have installed a septic tank, to which the caravan is connected, and they store a few cars in the barn used for Class R, B1 business purposes.

22. The appellants submit that the siting and occupation of the caravan for residential purposes is temporary and is PD as it complies with Part 5, Class A

[1] Town and Country Planning (Enforcement notices and Appeals)(England) Regulations 2002 Part 2, paragraph 4

of the GPDO. They also submit that the installation of the septic tank is reasonably necessary for the purposes of agriculture and benefits from Part 6, Class A GPDO rights. With regard to the storage of cars, the appellants submit that they were parked in the barn and were being used as part of an acoustic research project.

23. With regard to the use of the land for the siting and residential occupation of a caravan, I find, as discussed in Appeal A, that the development has been carried out without the benefit of PD. There has therefore been a breach of planning control and the appeals on ground (c), as they relate to this part of the allegation, fail.

24. With regard to the installation of the septic tank, at the site visit I saw that it has three pick-up points, one for the caravan which is connected and two, unconnected to anything, within and adjacent to the barns. The appellants submit that the unconnected pick-up points will serve the agricultural barns and potential future development within them such as a lunch room, first aid point, a washroom and toilet. It is also a "basic human right" that workers on an agricultural unit should have access to washing facilities and a toilet as farming is a "messy business at any time of the year". In addition, the facilities replace a former septic tank system which Plas Issa benefited from in the past, when it was part of a larger holding.

25. This is disputed by the neighbouring occupier whose house, Ty Issa, was also part of the larger holding. He states that Ty Issa the holding was split into three areas of which Ty Issa House, was one and Plas Issa another. He states that at no time was the Ty Issa House septic tank connected to Plas Issa. The foul water would need to rise significantly as Ty Issa House is on much higher ground. In addition, at the site visit, Mr Anderson was unable to show me where the previous septic tank or pipe work was located as he was not 100% certain.

26. Part 6, Class A of the GPDO permits any excavation or engineering operations which are reasonably necessary for the purposes of agriculture within the unit. It is for the appellants to demonstrate that the septic tank is reasonably necessary for the purposes of agriculture within their unit. In this instance they submit it is necessary for agricultural workers on the unit and also for the future development of the barns. However, other than Mr Anderson, there appear to be no other workers on the holding and at the time of the site visit there were only 18 goats present, though there may be more in the summer.

27. The neighbouring occupier describes how the land was used in the past when it was part of a larger holding. When the holding was first split up, the previous farmer kept Plas Issa for many years as an isolation unit for his pigs, before transferring them to the main herd elsewhere in the district. It appears there was no septic tank when pigs were being kept before the land was sold to the appellants.

28. It seems to me that the appellants' septic tank is not reasonably required for agriculture, especially as they refer to it being also for the future non-agricultural use of the site, which they have already begun to implement. They not only have the use of one barn for Class R, B1 business purposes but they have also obtained an LDC earlier in 2019 for the use of a detached farm building for Class R, B8 storage purposes.

29. It is therefore considered, on the balance of probabilities, that the septic tank is not reasonably required for the purposes of agriculture. The appellants' evidence is not sufficiently precise and unambiguous to demonstrate that the development of the septic tank does not result in a breach of planning control. The appeals on ground (c) therefore fail in relation to this part of the allegation.

30. With regard to the storage of cars, this use is taking place in the barn used by the appellant for Class R, B1 business purposes. At the site visit I saw two cars in the building, one with a dust sheet covering it. The appellants state they are being used as part of a research project into the time alignment of subwoofers in studios and automobiles. That may be the case but it seems to me that they are primarily being stored in the barn. As such, this element of the allegation also amounts to a breach of planning control as the lawful use of the barn is for Class R, B1 business purposes not B8 storage purposes. The appeals on ground (c) therefore fail in relation to this aspect of the allegation.

Ground (f)

31. The appeals on ground (f) are that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of a notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the residential use should cease and also require the removal of the caravan, the septic tank and the cars from the site. The purpose of the notice is therefore to remedy the breach of planning control.

32. The appellants submit that a lesser step would be to use the caravan, not for residential purposes, but as a first aid point, for washing and toilet facilities and as a lunch area. Failing that, the residential use of the caravan could cease and it could be stored to the rear of the barn used for Class R, B1 business purposes. With regard to the septic tank, rather than remove it completely from the land, it is submitted it could be stored to the rear of the barns. With regard to the stored cars, it is suggested that they could be parked outside one of the barns.

33. In respect to the caravan, leaving it on site either for a different use or in a different location would not remedy the breach of planning control. This is because the breach of planning control is the initial action or bringing the caravan to the site as well as using it for residential purposes. Offering to use it for another purpose or moving it to another part of the site would not remedy that initial action.

34. The purpose of requiring the removal of materials from the site that facilitate a breach of planning control is to ensure that the breach of planning control does not reoccur. So, it is therefore necessary to require the removal of the septic tank and the lesser step of storing it behind the barns would not remedy the breach of planning control.

35. With regard to the removal of the cars, the allegation is that they are stored. However, the appellant submits that they could be "parked" outside one of the barns. It may be that the use of the word "parked" is a slip of the tongue but there is a difference between a vehicle that is stored on site and one that is parked on site.

36. "Parked" is when a car is left in a convenient place for the resumption of an uninterrupted journey or the start of the next journey. It may be short term, overnight or long term. However, keeping cars on a site for example, after manufacture, or because a driver is disqualified, would be a storage use. This is because the notion of parking is that it is a temporary cessation from when the vehicle is in motion. A car is still in use when it is parked. It is probably not in use when it is put into store.

37. Given what the appellant states about the cars and the fact that one was covered in a dust sheet, it is considered that the cars are being stored and merely relocating them to a new storage position would not remedy the breach of planning control. For all of these reasons the appeals on ground (f) fail.

Conclusions

Appeal A

38. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the temporary siting of a caravan while internal building and engineering works are carried out on agricultural barns was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeals B and C

39. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

D Fleming

INSPECTOR