



Appeal Decision

Inquiry held on 8 July 2009

by **Paul V Morris** DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10th August, 2009.

Appeal Ref: APP/K1128/C/08/2089577

Riverside Farm, New Mill Lane, Loddiswell TQ7 4DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs J Burner against an enforcement notice issued by South Hams District Council.
- The Council's reference is EN_NOT/0032/08.
- The notice was issued on 9 October 2008.
- The breaches of planning control alleged in the notice are:
 - a) failure to comply with condition No 1 of a planning permission Ref 32/2388/03/CU granted on 5 April 2004 for the temporary siting on the land of a mobile home (A) for an agricultural worker. The condition in question states that: *'The mobile home hereby permitted shall be removed on or before 4 April 2005 when the land shall be restored to a tidy condition to the satisfaction of the local planning authority.'* The notice alleges that the condition has not been complied with in that the mobile home permitted has not been removed and the land restored, as required;
 - b) the erection of miscellaneous structures in connection with a residential use and a florist business including workshop/office, portacabin for domestic storage, and kennels, hutches and cages for domestic animals;
 - c) the siting of a mobile home (B) with pole mounted satellite antenna for a residential use in the area hatched black on the notice plan;
 - d) the change of use of the land to the use of land on expiry of the temporary planning permission from an agricultural use to a mixed agricultural and residential use.
- The requirements of the notice are to:
 - a) remove the mobile home (A) referred to in the grant of planning permission Ref 32/2388/03/CU from the land;
 - b) remove mobile home (B) and the satellite antenna and mounting structure from the land;
 - c) restore the land to a tidy condition to the satisfaction of the Local Planning Authority whose decision on the matter shall be final;
 - d) remove all domestic paraphernalia and ancillary domestic structures presently situated on the land including the adjacent storage portacabin, flower pots, outside seating, domestic pet kennels and cages, and items associated with the floristry business;
 - e) cease the residential use of the land.
- The periods for compliance with the requirements are: steps (a) and (c) – 6 months; step (b) – 2 months; steps (d) and (e) – 8 months.
- The appeal is proceeding on grounds (b), (c), (d), (e), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Procedural matter

1. The evidence to the inquiry was given on oath.

Preliminary amendments to the enforcement notice

2. The enforcement notice required the following amendments. These were raised and discussed at the beginning of the inquiry, and I am satisfied that they would not cause injustice to the appellant or the Council:
 - the deletion of 'Material change of use' from the notice heading as the notice allegation included breach of condition, operational development and material change of use;
 - additional reference in the notice introduction to Section 171A(1)(a) to reflect the above;
 - the postcode in the site address to be corrected to TQ7 4DB as pointed out by the appellant;
 - parts 3(b), (c) and (d) of the allegation to be preceded by 'without planning permission' to clarify the intent of the notice;
 - the amendment, in paragraph 5(a), of planning permission reference 32/2388/03 to read 32/2388/03/CU;

Ground (e)

3. The appellant claimed that the notice was improperly served as there was an error in the postcode describing the land affected.
4. Whilst I have noted the error in the notice itself; it was apparent that all interested persons had received a copy of notice and all the relevant correspondence. The Council confirmed that the copy of the notice had been posted to the appellant's correct address, and a copy had been served personally.
5. I am satisfied that the notice was properly served, and the appeal on ground (e) fails.

The planning history

6. Before dealing with the following grounds, I have reviewed relevant aspects of the planning history which influence the outcome of the appeals on these grounds.
7. Appeal decision APP/C/97/K1128/648688, dated 20 May 1998, upheld an enforcement notice, with corrections and variations, relating to land at The Leat, New Mill Lane, Loddiswell. It was confirmed that this related to the current appeal site. The alleged development included, amongst other things, the storage of caravans, the siting of at least one caravan for use as a dwelling, and the siting of portable container units for non-agricultural use. The requirements of the notice, as varied, were to cease all non-agricultural use of the land, including residential use and storage of caravans and container units, and to remove from the land all caravans and container units. This upheld enforcement notice is in force.

8. Planning permission Ref.32/2388/03/CU was granted on 5 April 2004 for the temporary siting on the land of a mobile home (A) for an agricultural worker. Condition 1, the subject of this appeal, required the removal of the caravan on or before 4 April 2005.
9. Appeal decision APP/K1128/C/07/2043517, dated 29 November 2007, upheld an enforcement notice relating to land at Riverside Farm, New Mill Lane, Loddiswell. It was confirmed that this related to the current appeal site. The alleged development was the commencement of construction of a building (the proposed 'dairy and cheese processing building') other than strictly in accordance with the requirements of planning permission ref No: 32/2058/87/3. The requirement of the notice was to demolish the unauthorised building.

Grounds (b) & (c)

10. The appellant claimed, in relation to the dairy, office and workshop, that there was no breach of planning control as the building was being completed in accordance with the approved plans, which had been misinterpreted in the 2007 appeal mentioned above. I note, however, that this building is not part of the notice allegation subject of this appeal.
11. A further point was that the mobile home, subject of the notice, is permitted development. It was clarified that this claim related to mobile home A, as mobile home B had already been removed from the site. However, the appellant's evidence was that a further mobile home had been placed on the land to form linked accommodation with the original mobile home A.
12. The appellant cited the Caravan Act 1970, and that the mobile home was required whilst finishing the agricultural building and refurbishing the existing fish farm, which falls within the provisions for development on units of less than 5 hectares in the General Permitted Development Order 1995. I can find no reference to a Caravan Act 1970, but I assume that this is a reference to the Caravan Sites and Control of Development Act 1960, related to the General Permitted Development Order 1995 Schedule 2 Part 5, and the provision contained in paragraph 9 of Schedule 1 of that Act that no site licence is 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.
13. However, this does not apply in this case as there is an enforcement notice in force requiring the demolition of the unauthorised building. There are no permitted development rights in relation to unlawful development. As for the fish farm, I heard no evidence to suggest that the residential caravan was sited on the land whilst authorised engineering operations were being carried out; its presence seems simply to be part of a pattern of persistent unauthorised uses of this land.
14. In addition, following the 1998 appeal, there is an enforcement notice in force which requires the cessation all non-agricultural use of the land, including residential use and storage of caravans and container units, and the removal from the land of all caravans and container units. The caravan(s) and the portable buildings are therefore in breach of planning control as their presence contravenes the terms of this enforcement notice.

15. Whilst maintaining this line of argument based on the mobile home being a caravan, the appellant also claimed at the inquiry that the mobile home was a permanent structure. In support of this, it was said that the wheels and axle of mobile home A had been removed and metal bars had been fixed to the chassis which were concreted into the ground to maintain stability.
16. Whilst these works may, to some extent, alter the mobility of the unit, it retains the character and appearance of a caravan. It would be necessary to sever the metal bars which could be done relatively quickly and easily, and then the unit could be moved by re-attaching the axle and wheels, or by lifting it on to a suitable vehicle or trailer. To my mind, the presence of the further unit side to end of the original mobile home A does not affect my conclusion and it could be dealt with in a similar or related way.
17. On grounds (b) and (c), the onus is on the appellant to substantiate why these grounds should succeed. From the evidence, I can see no sound reason to conclude that the alleged development as a whole has not occurred as a matter of fact, or that there has not been a breach of planning control. The mobile home is, on my reasoning, a caravan, it is still on site in breach of condition 1 of planning permission Ref.32/2388/03/CU and in contravention of an enforcement notice, there are no permitted development rights for the caravan, the portable buildings are in contravention of an enforcement notice, and no case was put forward in relation to the remaining details of the alleged development.
18. Grounds (b) and (c) therefore fail.

Ground (d)

19. The appellant claimed that the portable buildings are for storing sundries and equipment in relation to a florist business which has been run from the site for over 10 years.
20. Whilst this may be so, in relation to this ground (d) appeal, I have to repeat that, following the appeal in 1998, there is an enforcement notice in force which requires the cessation all non-agricultural use of the land, including residential use and storage of caravans and container units, and the removal from the land of all caravans and container units. The caravan(s) and the portable buildings currently on the appeal site are therefore in breach of planning control as their presence contravenes the terms of that enforcement notice.
21. No immunity from enforcement action can be claimed for any development which contravenes the terms of the enforcement notice. This includes any use of the land, including running a florist business which is not agricultural, and the siting of portable container units.
22. It also follows that there is no immunity for the siting of the caravan(s) for use as a dwelling, and any residential use taking place on the land. I acknowledge, as was emphasised by the appellant, that planning permission Ref.32/2388/03/CU was granted on 5 April 2004 for the temporary siting on the land of a mobile home (A) for an agricultural worker, but this planning permission was limited by condition 1 which required its removal by 4 April 2005. Whilst the breach of this condition has persisted to the current time, this

would not count towards any period of immunity as the enforcement notice, to which I have referred, is still in force.

23. It was pointed out that the works to fix the caravan to the ground took place in August 2004. Whilst this may have been so, I have come to the view, in relation to grounds (b) and (c), that it does not amount to a permanent structure and remains to be considered as a caravan sited on the land. As such, I can only reemphasise my conclusion in the preceding paragraph.

Ground (f)

24. The appellant maintained that it is excessive to remove the plant pots, tables and chairs as the site has been a garden since 1984; the kennel and cages are for agriculture and the keeping of animals; the plant pots are associated with a florist business which has been operational since 1984.
25. Whilst I appreciate the appellant's attachment to the site and the activities which take place, I again refer to the enforcement notice upheld on appeal in 1998 and in force. To accede to the appellant's claim would be tantamount to ignoring the terms of this enforcement notice and, to my mind, this would be neither right nor proper.
26. It follows that the requirements are not excessive, and the ground (f) appeal fails.
27. In coming to this conclusion, I have given further thought to a query I raised at the inquiry about requirement 5(c). The wording of this requirement could be considered to imply consideration of matters by the Council outside the terms of the enforcement notice, and therefore unfair to the recipient of the enforcement notice. However, in this case, I have borne in mind that the wording of requirement 5(c) reflects the wording of condition 1 of planning permission Ref.32/2388/03/CU, and the enforcement notice is concerned, in part, with the breach of this condition. I therefore do not propose to amend the requirement.

Ground (g)

28. The appellant's supporting submissions for this ground were concerned with the justification for a fish farming business on this site. However, this is not part of this appeal, and bearing in mind the terms of the enforcement notice upheld on appeal in 1998 and in force, I can see basis for extending the overall time for compliance.
29. Having said that, I find that the times for compliance as set out in the notice are confused. For instance, it seems to make little sense to require restoration of the site within six months, whilst allowing eight months for removing various items from the site. The time for compliance can be simplified so that all the requirements should be complied with within in eight months.
30. Subject to that variation, the ground (g) appeal fails.

Further amendments to the enforcement notice

31. It became apparent during the inquiry that the notice was not clear in its reference to portable buildings and other structures. I proposed that

paragraph 3(b) of the allegation be corrected to read: 'The siting of two portable buildings related to the residential use and the use for a florist business, and the erection of kennels, hutches and cages'. This correction was agreed by the appellant and the Council. The notice can be varied accordingly.

FORMAL DECISION

Appeal Ref: APP/K1128/C/08/2089577

32. I direct that the enforcement notice be corrected by:

1. deleting, from the notice heading, 'Material change of use';
2. substituting, in the notice introduction, 'Section 171A(1)(a)&(b)';
3. deleting, in paragraph 2, the term; 'TQ7 4DD' and inserting: 'TQ7 4DB';
4. deleting the words of paragraph 3(b), and inserting the words: 'Without planning permission, the siting of two portable buildings related to the residential use and the use for a florist business, and the erection of kennels, hutches and cages';
5. inserting, at the beginning of paragraphs 3(c) and (d), the words: 'Without planning permission,';

and varied by:

6. adding, in paragraph 5(a), the term ' /CU' to planning permission reference 32/2388/03;
7. deleting the words of paragraph 5(d) and inserting: 'remove the two portable buildings related to the residential use and the use for a florist business, the kennels, hutches and cages, all domestic paraphernalia, and items associated with a florist business';
8. deleting the words of paragraph 6, and inserting: 'Within eight months after the date this notice takes effect'.

33. Subject to these corrections and variations, I dismiss the appeal and uphold the enforcement notice.

Paul V Morris

Inspector

DOCUMENTS

- 1 Record of attendance
- 2 Statement of Common Ground
- 3 Appeal decision APP/C/97/K1128/648688 – 20.5.98
- 4 Extract – EPLP – 2-3681 P181.01
- 5 Extract – DC Practice paragraph 4.34
- 6 Appeal decision APP/A2525/C/08/2091675 – 6.7.09
- 7 Closing submissions - SHDC

