The Planning Inspectorate

Appeal Decision

Inquiry held on 8 February and 12 June 2012
Site visit made on 7 February 2012

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 25 July 2012

Appeal Ref: APP/R3325/C/11/2162410
Land at Wagg Meadow Farm, Wagg Drove, Huish Episcopi, Somerset TA10 9ER

- 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 Mr S B Davis against an enforcement notice issued by South Somerset District Council.
- The Council's reference is EN10/00312/USE.
- The notice was issued on 2 September 2011.
- The breach of planning control as alleged in the notice is without planning permission
  a. the carrying out of operational development (being building and/or other operations) on the land, namely the erection of a building to be used as a single dwelling house;
  b. the material change of use of the land from an agricultural use to a mixed use of agriculture and residential by:
     i. The use of a building on the land as a dwelling house.
     ii. The siting of caravans on the land for residential use.
     iii. The use of the land as a permanent camp site for visitors.
- The requirements of the notice are:
  a. Discontinue the residential use of the land, namely the use of the building and the caravans.
  b. Demolish the said building and remove all materials forming the building from the land.
  c. Remove from the land the caravans and all fixtures and fittings associated with the residential use of the caravans.
  d. Discontinue the use of the land as a campsite.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b),(d),(f) and (g) 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.

Procedural Matters

1. Evidence was given under oath or by sworn affirmation.

2. Applications for costs were made by the appellant and council. These applications are the subject of separate decisions.

3. An additional ground of appeal (ground (c)) was added.

4. The appellant argues that the notice was not precise, in that in the allegation 3(a) reference is made to 'the erection of a building', without identifying the specific building. I do not accept the notice is imprecise; it is directed at people with knowledge of the land and as there is only one building that has had its

use changed in the way described, those receiving the notice would not be in any doubt as to what the notice was directed at.

5. The appellant considers that the notice is incorrect in that it has identified the land of the enforcement notice as being one planning unit, whereas he says it is a clear principle that a separate dwelling house should be considered as a separate planning unit. Therefore, the allegation 3(b)(i) is wrong in that the dwelling house does not result in a contribution to a mixed use of the site as a whole.

6. I accept that where possible it is usual for dwelling houses to be identified as individual planning units. However, each case is looked at on its own facts. Here it is clear that the unit of occupation of the land is the whole site identified by the enforcement notice. While there are some boundaries within the land in relation to the stock and planting, there is no distinct physical separation around the building, with parking and nearby land appearing to be shared by the various uses that are now occurring.

7. The appellant suggests that the dwelling house unit is a separate and self-contained unit of accommodation, with the balcony being the only outside space for the dwelling. However, the parking spaces are clearly shared and photographs in August 2011 show a deck chair, potted plants and other domestic paraphernalia outside the dwelling house. While the appellant now maintains that the dwelling house is a separate use from the agricultural unit, it was noted in the latest proof of evidence that there is some use of the building for storing animal feed, expensive equipment, farm machinery, tools, chemicals etc. I have taken account of Burdle v Secretary of State for the Environment and the 'test' suggested. In this situation where the whole site is the unit of occupation with a variety of activities that are not incidental or ancillary to one another, but which fluctuate and are not specifically confined within separate or physically distinct areas of land, the use of the land is in my view a composite use and the appropriate planning unit is the whole of the land.

Decision

8. The appeal is allowed on ground (g) and I direct that the enforcement notice be varied by the deletion in Section 6 of 'Four (4) months after this notice takes effect' and substitution with '(i) Requirements (a) relating to residential use of the building and requirement (b) - six months after this notice takes effect and (ii) Requirements (a) related to residential use of the caravans and Requirements (c) & (d) - four months after this notice takes effect. Subject to these variations the enforcement notice is upheld.

Reasons

Ground (b)

Barn

9. The appellant argues that the building was built as a barn and was then converted to house, so the barn itself, which he says was substantially complete by the end of August 2007, was in place 4 years before service on the enforcement notice on 2 September 2011. I do not accept that was the situation. The appellant's previous case was that the intention from the beginning was ultimately to occupy part of the building as a dwelling and that

provision from the outset was made for domestic use at a later date. The appellant confirmed on the second day of the inquiry that the second but last paragraph on page 4 of the original proof remained correct. It is plain that this must be the case.

10. While the appellant argues that you can have a barn with cavity walls and services and that there was no insulation to the walls, it is not at all likely that you would put in a concrete floor with an integral decorative finish over part of the structure of a barn. The layout has the clear appearance of a house, with decorative floor for the dwelling side and plain concrete floor on the 'garage' side. The appellant suggests that the plain concrete was only used because the decorative concrete ran out. I attach little weight to this, particularly given the distinct break in between the two. The fact that insulation is not provided to the walls in the early stage of construction is not indicative of a barn being built; cavity insulation can be injected at a later stage if it is required.

11. It is my view that the appellant's intention was to build a house and not a barn from a very early stage, with clear demonstration of this with the construction of the concrete ground floor. I acknowledge that in relation to previous enforcement action, that was not continued, reference was made to the building looking like a barn. I do not disagree that the building, particularly at the early stages, would have had the external appearance of a barn, but that does not mean that is what was intended to be constructed or was constructed. The arrangement of the concrete floor and decorative finish makes the intentions, and what was constructed clear to me.

12. I accept that the building was used for some agricultural purposes from August 2007 until the beginning of 2008 when the appellant says 'conversion' to the dwelling commenced. However, while there was a break in the construction work of the house at that time, when the building was used for other purposes, that does not make the building as constructed a barn, but was a convenient use of the partially completed dwelling house, for a very short period in the construction lull.

13. I find that the construction of a dwelling has occurred as a matter of fact and the appeal on ground (b) in relation to this fails.

Campsite, Grounds (b) and (c)

14. The appeal is against the use of the land as a campsite. There is no argument that tents were on the land at the appeal site. In written evidence the appellant says that he erected 4 tents left over from Glastonbury and these were erected to dry out. However, in evidence to the inquiry the number of tents that were needed to be dried was identified as about 20, and these were put up and taken down a few at a time. The argument is that apart from one of these they were not occupied and in any case they were not there for a period in excess of 4 weeks, and so were permitted development.

15. In answer to questions, the appellant was not precise about the length of use of the site for the tents, using such terms as the friend was in the tent for 'about' 4 weeks. The council saw tents on site at the beginning of August. Glastonbury would have finished towards the end of June. Even with the delay in returning from the festival of 2/3 weeks, the tents would have been likely to be in place for some time. In my experience the time to dry a tent out after a soaking, which would logically be on a dry day, is not more than a day. In

addition, the tents shown in the council's photograph were well spaced apart, which would not be necessary for purposes of drying out. Even if it was 20 tents and they were put up a few at a time over a period, the use of the land would have been continuous use by tents, albeit different tents.

16. It is up to the appellant to demonstrate on a balance of probability that what is alleged has not occurred.

17. In my view, the information provided is not clear and unambiguous and given the dates of the Glastonbury Festival, the council's visit in August with the tents in place and the enforcement notice commencement period of 2 September 2007, I consider that it is probable that the land was in use as alleged for a period of more than 4 weeks. While I accept that the reference to 'visitors' is not absolutely necessary it does not impede the notice and there is no reason that it should be removed. The appeal on grounds (b) and (c) fails in relation to use of the land as a campsite. I would also note that the tents have been removed and that this decision does not interfere with any future temporary use rights in compliance with permitted development.

Ground (d)

Dwelling house

18. There is no argument that the dwelling house was not completed until after 2 September 2007, with the appellant's own evidence identifying internal construction occurring in the early part of 2008, with occupation following. Therefore the operational development could not have been completed, or use of the building been continuous, for the required 4 years prior to service of the enforcement notice. The appeal on ground (d) fails.

Ground (f)

Mobile Homes

19. The appellant confirmed at the inquiry that the only ground of appeal related to the mobile homes was ground (f). It is argued that these are needed in relation to the agricultural unit, providing accommodation for workers in return for work on the agricultural unit. However, there is no evidence of substance provided to show a need for even one of the mobile homes. While in theory there could be an argument for some temporary accommodation at times when the asparagus is picked or other particular periods, this would normally be available as permitted development, with removal of the units at the end. The appellant has not demonstrated a need for the mobile homes. I conclude that the steps required by the notice do not exceed what is necessary to remedy the breach identified in the notice. The appeal in relation to these on ground (f) fails.

Dwelling house

20. The appellant considers the requirements of the notice for removal of the building is unreasonable and that it should be allowed to be retained as an agricultural building. He notes that the council had viewed the building in the past, at which time it considered the building as a barn and took no action. He notes that the barn is required in association with the agricultural use of the land.

21. While some storage space may be required in relation to the agricultural use, the appellant has not demonstrated on the balance of probability the need for such a large building. This is particularly so as there are other structures on the land providing storage facilities. While a barn might be considered as permitted development, that is only the case if it can be demonstrated that the development is reasonably necessary for the purposes of agriculture within the unit. In my view, it has not been demonstrated that such a large structure is reasonably necessary for the purposes of agriculture within the unit. I conclude that the steps required by the notice do not exceed what is necessary to remedy the breach identified in the notice. The appeal on ground (f) in relation to the dwelling house fails.

Ground (g)

22. While I accept that it would be possible to demolish the building within 4 months, it is also necessary to allow some time to find alternative accommodation for the residents of the barn. I note that parents own a house nearby. While I expect the appellant will have to pay a market rent for any housing he finds, the parents' house is not in the control of the appellant and does not have to be made available to the appellant. I think that it is reasonable that more time is made available to find appropriate accommodation for the appellant and his family. I do not consider that it has been demonstrated that 12 months is required for this, but I consider that 6 months would be a reasonable period. The appeal on ground (g) succeeds to this limited extent in relation to the dwelling house use.

Other Matters

23. No evidence was put forward in relation to human rights and the European Convention on Human Rights. Nevertheless, I recognise that dismissal of the appeal would interfere with the appellant's home and family life. However, this must be weighed against the wider public interest. For the reasons given above, I have found that the appellant's home is not lawful development and I am satisfied that the legitimate aims of development control as identified in the enforcement notice can only be adequately safeguarded by the refusal of permission. On balance, I consider that dismissal of the appeal would not have a disproportionate effect on the appellants.

Graham Dudley

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr S Jupp MRTPI BA (Hons) LLM
He called
Mr S B Davis
Mr T Ferguson

FOR THE LOCAL PLANNING AUTHORITY:

Miss A Cater	Solicitor for South Somerset District Council
She called	
Mr R Wotton	Senior Enforcement Planner
Mr D Heath-Coleman	Planning and Enforcement Assistant

INTERESTED PARTY:

Mr E Holly

DOCUMENTS

Document	1	Appellant's opening submissions
	2	Council's opening submissions
	3	Better quality plan – appendix 7
	4	Concrete quote dated August 2006
	5	Appellant's costs application
	6	Council's costs application
	7	Council's closing submissions
	8	Appellant's closing submissions
	9	Appellant's costs response