The Planning Inspectorate

Appeal Decision

Site visit made on 11 March 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/R3325/C/18/3219307
Land at The Old Embankment, Mill Lane, Pitcombe, Bruton (parcel 1) and Land North of Mill Lane, Strutter Hill, Pitcombe, Bruton, (parcel 2)

- 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 T Palmer against an enforcement notice issued by South Somerset District Council.
- The enforcement notice, numbered 18/00193/OPERA, was issued on 20 November 2018.
- The breach of planning control as alleged in the notice is without planning permission: (1) The unauthorised change of use of the land to a storage use by the storage of 2 shipping containers and a touring caravan, plant and machinery; (2) The unauthorised formation and use of two vehicular accesses on the land, those access [sic] marked A and B and hatched green on the plan by the removal of the native hedgerow and laying of hardstanding and erection of gates and fences; and (3) Unauthorised engineering work by the excavating of earth to form a track on the land.
- The requirements of the notice are: (1) Permanently cease the use of the unauthorised vehicular accesses A and B; (2) Cease the use of the land for storage; (3) Remove from the land the two storage containers, the touring caravan and restore the land upon which they have been sited to its former condition; (4) Cease all engineering works; (5) Remove from the land all hard core and hardstanding (including apron), gates and fencing and other paraphernalia associated with the creation of the unauthorised vehicular access [sic] A and B and any other associated works; (6) Restore the land (where the unauthorised excavation has taken place) to its former condition before the excavation of the track began and remove all plant, machinery and vehicles from the land; and (7) Block up the unauthorised vehicular accesses A and B by replacing and restoring the roadside hedging with native species.
- The period for compliance with the requirements is: As to requirements (4), (5) and (6) 21 days from the date of this notice takes effect; and, as to requirements (1), (2) and (3) 28 days from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

Ground (e)

2. This ground of appeal is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected.

3. The Official Copy of Register of Title from the Land Registry ('the Title Documents') show that the land that is the subject of the notice comprises two separate parcels[1]. These Title Documents show that the owners of both parcels are Thomas Phillip Palmer and Alison Sharon Palmer.

4. It is common ground between the parties that a copy of the notice was addressed to Mrs S Palmer. However, the evidence shows that this was delivered by hand to Mrs Alison Palmer's address and that an email from her to the Council, dated 11 December 2018 and giving the Council's reference for this enforcement case, was written with reference to "the Planning Enforcement and Stop Notice issued in respect of Land at Mill Lane, Pitcombe".

5. This leads me to find that, even with the incorrect initial on the letter, Mrs Palmer was fully aware of the notice and its terms, before the notice came into effect.

6. Notwithstanding this, the Council states that a copy of the notices that were addressed to the 'Owner/Occupier' were fixed to the entrance gate. This is not challenged by the appellant. This method of serving notices is included within the terms of section 329 of the Act, which deals with such matters.

7. In these circumstances, I find that a copy of the notice was served on the site's owners in the manner required by section 172 of the Act and that the methodology for this was in accordance with section 329 of the Act. Therefore, for the reasons given above, I conclude that the appeal on ground (e) should fail.

Ground (b)

8. The notice alleges three separate breaches of planning control, in brief these are: the change of use of the land to a storage use; unauthorised engineering works to form a track on the land; and the formation of two vehicular accesses to the land.

9. The land is made up of a length of an abandoned railway line, that runs in a northwest to southeast direction. At its northwest end, as it approaches a bridge across a road, it is raised above the surrounding land on an embankment. The sides of this embankment are, to a large degree, wooded. The embankment decreases in height away from the bridge before the route of the line is set in a deep and steep-sided cutting. Beyond this, the line ran along a further embankment that increases in height to a point where it appears there would once have been a bridge across the A359. The remainder of the land, where that bridge would have been, is at a lower level and is thickly treed.

10. Part of the basis of the first of the allegations in the notice is that two shipping containers have been stored on the land. However, the Council has agreed in its submissions that there is only one container on the land. During its investigations, the Council did not inspect the interior of the container, and I have no firm evidence to show that it inspected the interior of the caravan. It determined that, as both had been placed on the land without any justification, they were being stored there. According to the first of the allegations in the notice, the consequence of this is that the land as a whole, defined by the red line on the plan attached to the notice, was used for storage purposes.

[1] WS81769 and WS83474

11. The appellant states that both the caravan and the container were sited on the land for purposes related to its use for agricultural purposes. He states that the caravan's purpose is to provide shelter in poor weather and to provide a space to take refreshment in, and that the container was used for storage purposes ancillary to the agricultural use of the land.

12. However, the appellant's evidence that the land was in agricultural use is scant. It recites his wife's intention to keep goats and to grow grape vines/hops, vegetables and herbs, but I have no evidence that this has been undertaken nor did I see evidence of this at my site visit. In addition, he states that nearly 200 trees have been planted as a setting for the farmland and I saw that a considerable number of trees had been planted along the sides of the embankments and cutting. Included within the definition of agriculture[2] is "the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes". Therefore, the planting of trees and the use of the wooded areas on the site could be classed as an agricultural use, if this was ancillary to other agricultural purposes being carried out on the land.

13. The appellant's submissions do not provide clear evidence showing that the land is in agricultural use. Furthermore, I did not see definitive evidence that the land, which is of a relatively limited area and of a physical form that would preclude many forms of agriculture, was being put to an agricultural use.

14. I saw that water had been brought to the site and that a trough had been installed. Amongst the paraphernalia kept in the open on the land were a wheelbarrow, young trees in pots, various plant pots, metal fence panels and several piles of stones and timber. I inspected the interior of the caravan and the container. The former contained few things but did have facilities for the making of refreshments. The latter had, amongst other things, a quad bike, a small tractor, a chainsaw, a strimmer, guards to protect young trees, fencing materials and various small tools.

15. Having regard to the evidence and what I saw on-site, I find that the first breach of planning control is incorrect as the land is not in a storage use. However, I am also not persuaded that the land is being used for agricultural purposes. The available evidence points to the probability that the use of the land can be described as a leisure plot, to which the caravan and container appear to have been used for ancillary purposes.

16. As the notice is not missing some vital element, as defined in S.173 of the Act, I do not find it to be a nullity. Using the powers conferred by S.176(1) of the Act, it is possible to correct any defect, error or misdescription in a notice. However, these powers can only be used where I can be satisfied that the correction will not cause injustice to the appellant or local planning authority.

17. In this instance, correcting the notice to reflect what has occurred would require the fundamental re-writing of the alleged breach of planning control and requirements. The corrected notice would be substantially different from wat had been described by the Council. Subsequently, the envisaged corrections to the allegation and requirements would undermine the basis of the issued notice. This would require both parties to advance markedly different cases to those that they have put forward and, therefore, both would suffer injustice.

[2] S.336(1) of The Town and Country Planning Act 1990, as amended

Conclusion

18. For the reasons given above, the ground (e) appeal fails. I further conclude on ground (b) that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.

19. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

20. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Roy Curnow

INSPECTOR