

PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY
DEVELOPMENT MANAGEMENT COMMITTEE
2 SEPTEMBER 2020

Case Reference No: EC19/0020

Site Address: Land adjacent to Castle Hill, Newport, Pembrokeshire SA42 0QE

Breach of Planning Control: The material change of use of land for agriculture to a mixed use for agriculture and residential, by the siting and use of two caravans to provide living accommodation.

Summary

An Enforcement Notice was issued by this Authority on 15th July 2019 relating to the material change of use of land from agriculture to a mixed use for agriculture and residential by the siting and use of two caravans to provide living accommodation and the storage of a camper van.

An appeal was made against the serving of the Enforcement Notice but this was dismissed by the Planning Inspectorate in their decision dated 4th December 2019. Following the appellant's unsuccessful appeal against the Enforcement Notice they then proceeded to seek to judicially review the Planning Inspectors decision in the High Court but permission was refused by the High Court on 21st January 2020.

The period for complying with the Enforcement Notice has now expired. At the time of writing this report the Enforcement Notice has not been complied with.

Planning History

NP/08/107 - Change of use to natural burial site to include associate parking, turning and storage barn. Withdrawn

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NP/15/0310/FUL - One Planet Development including one dwelling. Refused 17th March 2016 and Appeal Dismissed 1st February 2017

NP/18/0134/FUL - One Planet Development for Eco-smallholding including one dwelling. Refused 18th July 2018 and Appeal Dismissed 15th May 2019

Background

In January 2019 a complaint was received by this Authority concerning the siting of caravans and a camper van used for residential purposes on agricultural land. Following investigations by officers it was established that two of the caravans were being used for residential purposes. It was also established that a camper van was being stored on the land all without the benefit of planning permission.

An Enforcement Notice was subsequently served by this Authority in July 2019 which required the permanent cessation of use of the land for residential purposes, and the permanent removal of the caravans used for residential purposes. The Enforcement Notice also required the permanent removal of the camper van. The

period for complying with the Enforcement Notice was three months from the date that the Notice took effect.

Whilst the Enforcement Notice was partially complied with by removing the camper van from the land, the residential caravans remained. An appeal was subsequently made against the Enforcement Notice by the landowner on 21st August 2019. The Planning Inspectorate considered the appeal and upheld the Enforcement Notice (albeit slightly varying the wording of the Enforcement Notice) on the 4th December 2019. A copy of the Planning Inspector's decision dated 4th December 2019 is attached.

Following the appellant's unsuccessful appeal against the Enforcement Notice the landowner then proceeded to judicially review the Planning Inspector's decision in the High Court on the basis that the Enforcement Notice sought to remove permitted development rights. However, leave to appeal was refused on the basis that "*an enforcement notice will be interpreted so as not to interfere with permitted development rights under the General Permitted Development Order or with rights to use land for a purpose ancillary to a principal use which is itself not being enforced against*". This is otherwise known as the Mansi doctrine which is that a planning enforcement notice must be interpreted so as not to prohibit lawful uses. Therefore it is not necessary to specify in an enforcement notice that an occupier's lawful use rights are safeguarded.

The period specified for complying with the Enforcement Notice is three months from the date that it takes effect. The landowner has questioned the period within which the date for complying with the Enforcement Notice began. If an appeal is made against the Notice, the Notice does not come into effect until the determination or withdrawal of the appeal (section 175(4) TCPA 1990) which would be 4th December 2019 in this instance. Provision is also made under Section 289(4A) of the TCPA 1990 whereby if proceedings are brought in respect of an Enforcement Notice, the High Court may extend the period within which the Enforcement Notice takes effect pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State. Although the landowner made an application to judicially review the Inspector's decision, it is not clear whether the High Court made an order that the notice shall have effect pending the final determination of those proceedings. In any case three months have passed since the determination date of the appeal decision by the Planning Inspector (4th December 2019) and the date when the appellant was refused permission in respect of the judicial review in the High Court (23rd January 2020).

The Authority wrote to the landowner on 27th April 2020 requesting confirmation that the Enforcement Notice had been complied. The landowner was also advised in writing that failure to comply with the Enforcement Notice could represent a criminal offence open to prosecution proceedings in the magistrates' court. However, as a result of the Covid-19 pandemic and given government advice at that time for people to avoid any unnecessary travel etc. officers requested written assurance from the landowner that the caravans would be removed from the land, if they had not been removed already, once government lockdown restrictions were relaxed and allowing safe removal of the caravans.

Further correspondence has taken place between officers and the landowner but no assurance has been given by the landowner that the caravans will be removed from the land as required by the Enforcement Notice. The landowner has asserted that her use of the site is in accordance with permitted development rights. Whether her use did accord with permitted development rights was considered by the Inspector on appeal and it was concluded that her use was not in accordance with permitted development rights. The landowner has not provided any new/further information to cause a different view to be taken.

At the time of writing this report the Enforcement Notice has still not been fully complied with as the caravans used for residential use remain on the land. Ample time has been given to comply with the Notice. Officers have written to the landowner advising that the matter will be reported to the Development Management Committee seeking its authority to proceed with prosecution as a result of non-compliance with the Notice and to inform her that she is unable to rely on permitted development rights.

Conclusion

The failure to comply with an Enforcement Notice after it has taken effect is a criminal offence answerable, in the first instance, in the Magistrates Court.

The landowner has not complied with the Enforcement Notice within the required time, nor within the time that has elapsed since and further action to remedy this breach of planning control and its harmful impact is therefore required.

Legal Implications (to include Human Rights Implications)

Following service of the Enforcement Notice, the recipient had a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended) which they availed themselves of and the Appeal was subsequently dismissed. The time for complying with the Enforcement Notice has passed and during the period of grace since then there has been no sign of compliance with the Notice.

As the development has been used for human habitation it is necessary for the Authority to consider if the rights of the occupier(s) under the Human Rights Act 1998 and in particular the rights under Article 8 to the respect for private and family life which provides:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

In this case the continued residential use of the land has been held to be unlawful following a legal process and the exercise by the occupier of their right of appeal. Ample time has been given to enable compliance with the Enforcement Notice. In the circumstances, the commencement of criminal proceedings is a proportionate response in a democratic society in the interests of the planning control of the use of land and the protection and preservation of the special qualities that have led to this location being included within a National Park.

Equal Opportunities Implications (to include Welsh Language Issues)

None

Recommendation

That the Chief Executive/Director of Park Direction and Development Management Team Leader be authorised to instruct solicitors to commence prosecution proceedings in the Magistrates Court for non-compliance with the Enforcement Notice.



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 05/11/19

gan Janine Townsley LLB(Hons)
Cyfreithiwr (Nad yw'n ymarfer)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.12.2019

Appeal Decision

Site visit made on 05/11/19

by Janine Townsley LLB(Hons) Solicitor
(Non-practising)

an Inspector appointed by the Welsh Ministers

Date: 04.12.2019

Appeal Ref: APP/L9503/C/19/3235098

Site address: Land Adjacent to Castle Hill, Newport, Pembrokeshire.

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Ms Susan Gillooley against an enforcement notice issued by Pembrokeshire Coast National Park Authority.
 - The enforcement notice, numbered EC19/0020, was issued on 15 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for agriculture to a mixed use for agriculture and residential, by the siting and use of two caravans, and storage of a campervan ("the Unauthorised Development").
 - The requirements of the notice are to i) permanently cease the use of the land for residential purposes; ii) permanently remove the caravans from the land, and permanently cease the use of the land for the siting of caravans for residential purposes. You may keep on the land a total of one caravan for use solely as a day shelter during a particular season of a person or persons employed in farming operations on that land; iii) permanently remove the campervan from the land, and permanently cease the use of the land for the storage of campervans.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by:

At paragraph 3, after the word "caravans", the insertion of "to provide living accommodation"

At paragraph 5 (ii), the deletion of "You may keep on the land a total of one caravan for use solely as a day shelter during a particular season of a person or persons employed in farming operations on that land".

Subject to these amendments, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters and the Validity of the Enforcement Notice (EN)

2. The EN sets out the alleged breach of planning control at paragraph 3 as a material change of use from agriculture to a mixed use for agriculture and residential by the siting and use of two caravans and storage of a campervan. I was able to confirm at my site visit that there are three caravans on site. There is no dispute between the parties that these three caravans were in situ at the time enforcement action was taken.
3. The appellant submits that the EN is so defective that it must be quashed since it fails to specify which two of the three caravans on site are enforced against. The appellant returned a Planning Contravention Notice which states, in relation to the caravans, that "one is used by me as accommodation when I work as a seasonal worker on the land employed in agriculture. When not on site I stay with friends or family elsewhere. A second caravan is used for my comfort (shower and toilet) when working on the land (whether in season or otherwise) while the third is used to store things needed for agricultural purposes such as tools, seeds, compost etc."
4. Since the EN is clear that the alleged breach is the change of use of the land to a residential use and the appellant does not dispute that a residential use has been taking place, she would have been aware which of the caravans on site are related to that residential use. Whilst the PCN refers to a second caravan which is used to provide shower and toilet facilities whether the appellant is living on site or not, these facilities are required to support the residential use and it is reasonable to conclude that the appellant would have been able to understand this. Irrespective of this, whilst the appellant infers that the second caravan which provides toilet and shower facilities is part of an agricultural use, it would need to be established that the level of agricultural activity is such on site that toilet and shower facilities are necessary.
5. Overall, I am satisfied that it would have been clear to the appellant which of the two caravans relate to the residential use.
6. The appellant also states that the EN fails to set out what is required of her in compliance. However, the EN does this; it states that the use of the land for residential purposes should cease and the caravans used for that residential use should be removed. Therefore, it seems to me that the requirements of the EN are clear. In this case it is not necessary to specify which of the caravans are used for residential purposes as this would include all caravans used for residential purposes.
7. Furthermore, the appellant has been able to formulate a ground (c) and (f) appeal related to the residential use of the site. Overall, therefore, I find that the EN is valid.
8. Notwithstanding this finding, under s176 of the Act, Inspectors on appeal may correct "any defect in an EN or vary its terms provided no injustice is caused". For the above reasons, I do not consider any injustice would be caused to the appellant by amending the EN to set out in further detail which two of the three caravans are enforced against.
9. Paragraph 5 of the EN provides that one caravan may be kept on site as a day shelter, however, as set out above, a storage caravan has not been identified in the breach. For this reason, reference to it should not be made in the EN. Furthermore, the stationing of a caravan on land for agricultural purposes is not development and therefore it is not possible to purportedly place a restriction on the number of caravans so utilised. For these reasons, this reference within the EN should be removed entirely. I am satisfied that there would be no injustice caused to the appellant by this deletion.

10. At the time of my site visit there was no campervan on site. This element of the EN had therefore been complied with.

Reasons

The Ground (c) Appeal

11. The appellant states that the residential use of the land is permitted development. Representations are made that Part 5 of the General Permitted Development Order ("GPDO") allows for the change of use of land to a caravan site in circumstances set out in paragraph A.2 of the GPDO. Paragraph A.2 states that development is permitted subject to the condition that the use shall be discontinued when the circumstances in A.2. cease to exist, and all caravans on the site shall be removed as soon as reasonably practicable. Paragraph A.2 goes on to clarify that the circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), but do not include use for winter quarters.
12. The First Schedule of the 1960 Act sets out when a site license is not required and provides that the use of land as a caravan site is permitted where caravans are occupied by agricultural workers who are on site during a particular season.
13. In this case, the caravans have been on site since at least the beginning of 2019 and despite the appellant's assertions that one of the caravans was removed for a period of 14 days during July 2019, no part of the appellant's case suggests that the two caravans which support the residential use have been removed out of season. Both were present at the time of my site visit on 5th November. No evidence has been provided to suggest it has not been practicable for the caravans to have been removed in this time.
14. In any event, I cannot be satisfied on the basis of the information provided that the appellant is employed in farming operations in the terms of the 1960 Act nor do I have any information to suggest that the relevant "season" has been established to assess compliance with this legislation.
15. Accordingly, the appellant has failed to demonstrate that the use of the site is permitted by reference to Part 5 of the GPDO and the First Schedule of the 1960 Act.
16. It is further stated by the appellant that the stationing of a caravan on land for agricultural purposes is not development and that the two caravans referred to in the EN may be lawful as a result of this. However, there is nothing to suggest that the scale of agricultural activity on site is such that it would justify more than one storage caravan for agricultural purposes. The two caravans referred to in the EN are in residential use and are not in actual use for agricultural storage and thus this argument must fail.
17. For the above reasons, the ground (c) appeal is dismissed.

The Ground (f) Appeal

18. The Appellant has not advanced any specific alternative lesser requirements to those set out in the EN, other than stating that the steps in the EN are excessive since they require permanent removal of caravans from the land. From this it is possible to infer that the appellant believes that the caravans could remain on site for a proportion of the year, however, no proposals for this or justification have been put forward. In any event, it is clear that the Council requires that the caravans should be permanently

removed and accordingly I find the requirement of the notice to be the minimum required to remedy the breach. The appeal under ground (f) fails.

Other Matters

19. As the EN requires the cessation of a residential use I have considered whether the appellants rights under Article 8 of the Human Rights Act have been engaged. From the appellant's evidence, the appeal site is not the appellant's only or principal place of residence and alternative accommodation is available to her. No representations have been received to suggest that the appellant would experience any difficulty in complying with the EN within the 3 month period of compliance. For these reasons, I am satisfied that no interference with her human rights would be caused by her compliance with the requirements of the EN.
20. Interested party representations in support of the EN have been submitted, however, matters such as the appellant's approach to planning matters, the visual impact of the development and highways matters do not fall to be considered by me as part of a ground (c) or ground (f) appeal.

Conclusion

21. For the aforementioned reasons, and taking into account all relevant matters raised, I conclude the appeal should be dismissed. Subject to the variation of the EN as set out in my formal decision above, the EN is upheld.

Janine Townsley

Inspector