



Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 25 April 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 02 May 2017

Appeal Ref: APP/X1735/C/16/3153416

Land south of Mandai, St Peter's Road, Hayling Island, Hampshire, PO11 0RT

- 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 Laurence Stanley against an enforcement notice issued by Havant Borough Council.
 - The enforcement notice, numbered APP/14/01182, was issued on 27 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission and within the last ten years, change of use of the land to use as a leisure plot with ancillary development.
 - The requirements of the notice are:
 - 1 Permanently cease the use of the land as a leisure plot.
 - 2 Permanently remove all vehicles parked and stored on the land.
 - 3 Permanently remove boat and trailer parked and stored on the land.
 - 4 Permanently remove the storage container from the land.
 - 5 Permanently remove the caravans from the land.
 - 6 Permanently remove all associated development and paraphernalia from the land, including CCTV installation, hardstanding and patios, hot tub, timber sheds, decking, chiminea, skips, bench, picnic table, kerbing and playhouse.
 - 7 Re-instate the land to its original undeveloped condition prior to the breach of planning control.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: Notice varied and upheld**
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Procedural Matters

1. A Statement of Common Ground was provided prior to the commencement of the appeal.
2. All evidence was given under oath.

The Notice

3. The parties agree that the relevant date in view of the second bite provisions of s171B (4) (b) is 10 years before the date of the first notice which was 23 September 2014, and not 10 years before the date of the notice the subject of this appeal.
 4. The appellant asserts that the notice is invalid as it cannot be corrected without injustice. It is claimed that the notice fails to specify what the alleged
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unauthorised use has been changed from and specifies steps not related to the allegation but related to other uses of land. On the basis of the specified steps it is asserted that the proper use of the land is not as a sole leisure plot. Steps cannot be taken in relation to alleged breaches consisting of parking or storage related matters and there is a failure to specify the use of the land for the siting of caravans or the purpose to which those caravans are said to be put since these are not identified as matters constituting a breach. Step 6 fails to specify what use(s) the 'associated development' relates to and there is no way of identifying whether they relate to any of the matters for which steps are required but which do not constitute the breach alleged. Step 7 requires removal of all development irrespective of whether it is within the matter described in the breach or not. It goes beyond addressing matters which relate only to the breach alleged, since it requires the return of the land to an undeveloped state.

5. The appellant claims that the description of the breach and the steps required are so poor they cannot be corrected without causing injustice. The steps cannot simply be deleted since that leaves the appellant in an uncertain position as to what matters might be left on site or not in compliance with the notice. The appellant would be in jeopardy of prosecution, injunction and/or direct action that comes with material non-compliance in the view of the Council and exposed to a 'second round' of enforcement action in an attempt to cover matters simply deleted from the current notice.
6. It is established that a notice must seek to enforce solely by reference to the alleged breach¹. I consider that the allegation is clear in referring to a change of use of the land to use as a leisure plot, with ancillary development. The ancillary development provides a means for the appellant to enjoy the leisure use of the plot and the ancillary development is part and parcel of that use. It is not necessary for a notice to recite the previous use of the land² although it would have been helpful had it done so. The wording of the notice is sound and does not require correction.
7. S173(3) provides that a notice should set out the steps which the LPA requires to be taken or the activities which they require to cease. In this case step 1 requires the leisure use to cease and steps 2-6 require the removal of vehicles, caravans, a boat/trailer, a storage container and the various structures and associated paraphernalia from the land. These steps could not be more clear or unambiguous as to what is required and discloses exactly what the Council is seeking to achieve.
8. Step 7 specifies 'Re-instate the land to its original undeveloped condition prior to the breach of planning control'. A notice cannot go beyond requiring the restoration of the land to its condition before the breach took place. Whether the land was in an undeveloped condition before the breach is unlikely in view of the evidence before me as the land appeared to have been used for a period of time as a garden detached from a dwelling. Accordingly, I intend to vary step 7 of the notice by rewording it to 'Re-instate the land to its condition prior to the breach of planning control'.
9. Other than in respect of step 7, I am satisfied the steps are adequately drafted and relate to the allegation. There is therefore no need for the wording of the

¹ Encyclopaedia of Planning Law P173.07

² Westminster CC v SSE and Aboro [1983] JPL 602

allegation to be widened to embrace other uses purported by the appellant to be reflected in the wording of the steps. I have had regard to the Hickmet case cited by the appellant (Document 2) where it was established that the two concepts of parking and storage are distinct and mutually exclusive. However the facts of that case can be readily distinguished from those of the current case.

10. As it is not my intention to correct the wording of the notice or delete certain steps I do not accept that the appellant would suffer any prejudice. I am satisfied that under s176 the variation of step 7 would not cause injustice to the appellant as he is the person most knowledgeable about the state of the land prior to the breach taking place.

The appeal property

11. The appeal site is a rectangular plot of land in open countryside adjacent to a residential property known as 'Mandai' which is at the end of a number of residential properties on St Peters Road. The plot equates to the planning unit.
12. At my site inspection I observed that the site contained a number of structures and other items including a container set behind a timber screen on its long side within which were stored tools and equipment; 4 small skips, a rough area of ground containing rubble and earth; a substantial shredding machine; a well-tended lawn; a timber play house; a touring caravan with decking to its front; a structure containing a hot tub; a pool table; an arbour with seating; a structure containing services; a Peugeot motorhome between a raised area and the roadside hedge; a building containing a washing machine, a drier, WC, shower and drinks cooler and various domestic items; an above-ground foul water storage tank; together with paraphernalia associated with the leisure use such as a chiminea and picnic bench.
13. Vehicular access is from St Peters Road with gates set back from the highway giving way to a gravel drive to a second set of gates and a concrete hardstanding , beyond which is a third set of gates and a boat and a trailer. The site is fenced in part and hedged elsewhere.
14. The site was largely as depicted in the photographs in Appendix 8 attached to Mr Andrews proof on behalf of the Council.

Relevant planning history

15. An appeal was dismissed in March 2006 for outline planning permission for the construction of a chalet bungalow (APP/X1735/A/05/1192877).
16. A Planning Contravention Notice was completed by the appellant in May 2014.
17. The first enforcement notice dated 23 September 2014 was withdrawn by the Council at a public inquiry due to inadequacies in the requirements of the notice (APP/X1735/C/14/22267020).
18. A second notice was withdrawn before coming into effect due to inadequacies in the requirements of the notice.
19. A Lawful Development Certificate relating to use of the land as a leisure plot was refused in January 2015.
20. The third notice is the subject of this appeal.

The appeal on ground (d)

21. An appeal on this ground is that it is too late for enforcement action to be taken. The onus of proof rests with the appellant and the standard of proof is on the balance of probabilities.
22. The appellant states that there has been no material change of use of the site as it has been in a leisure use by the family and by the previous owner, a Mrs Cunningham, for many years. The site has been separated from Mandai since 1983 and there is mature vegetation separating the two properties.
23. In evidence, Mr McGowan confirmed he had managed the garden for Mrs Cunningham who lived away from the site and that that she used the plot as a garden and to enjoy wildlife. The old caravan had been used by Mrs Cunningham as a potting shed/tool store and for making tea and this use continued under the appellant when he acquired the property in September 2004. The appellant used it for occasional overnight accommodation and replaced the caravan on three occasions since 2004. The plot has been enjoyed by him and his family for leisure purposes since acquiring it, using the caravan as accommodation generally for weekend stays. There had also been a greenhouse on the land when the appellant purchased the plot but this has subsequently been removed.
24. The 2005 aerial photograph (Document 3) provides no conclusive evidence of a leisure plot, only a caravan and what appears to be the markings of a bonfire. Apart from these the site appears grass covered. I also note that correspondence in 2005 refers to the land as garden land³ and that in the 2005 planning application and subsequent appeal⁴ the appellant, the Council and Inspector at no time refer to the site as a leisure plot. The Inspector's view was that the site 'has more in common with the countryside' although no reference was made to a caravan on the site. Although the decision provides no clear indication on the use of the site at that time, in my experience any obvious use of the site would normally be referred to in an Inspector's decision, but such an omission is insufficient to identify the use of the land one way or the other.
25. The appellant's planning witness, Mr Oliver, makes no distinction in planning terms between the use of the land as a garden detached from a dwelling and use as a leisure plot. However I note that the 3rd Edition of the Land Use Gazetteer attached as Appendix 20 to Mr Andrew's evidence identifies such uses separately as *sui generis* uses. In cross examination Mr Andrews was unable to distinguish between specific characteristics of such uses but relied on it being a matter of planning judgement based on the facts. He stated that he has had regard to the cumulative totality of the activities and developments on the site. As there is no planning definition of a garden or a leisure plot, Mr Andrew has referred to the Oxford English Dictionary definition of a garden being '..the growing of plants, fruit and vegetables..'
26. Whilst I agree with the appellant's point that many of the activities carried out in a garden could also be carried out on a leisure plot, such as the activity of gardening, it is clear to me that in this case, in planning terms, there is a material difference between the use of land as a garden detached from a dwelling and its use as a leisure plot. It is probable that for the first few years

³ Appendix 10 of Mr Andrews' evidence

⁴ Appendices 10, 11, 14 and 15 of Mr Andrews' evidence

of the appellant's ownership of the plot no material change of use occurred in that any leisure use would have been *de minimis* but sometime around 2009/2010 the nature of the use changed to the extent that it became a material change of use.

27. In 2008 Council officers visited the site on 2 occasions but they were only concerned about works to the access track. The appellant states that the storage container was brought onto the site in the summer of 2009, the hot tub in 2009 and a timber shed in 2010. The hardstanding was laid around 2009 and the decking installed in 2013. These changes support the leisure use of the plot, rather than use as a detached garden as, in my view, facilities such as for showering, clothes washing and drying would not normally be expected to be found in a detached garden, nor would the provision of services such as electricity, a broadband connection and to some extent a flushing toilet and waste management facilities, or for people (albeit family members) staying overnight in a caravan and a motorhome with regularity. All this leads me to conclude that a material change of use has occurred.
28. In *Shephard and Love v SSE and Ashford BC [1992] JPL 827* (Document 5) it was held that there is no category of land use known as leisure activities, therefore a change from one leisure activity to another was capable of constituting a material change of use.
29. Although there were a few small discrepancies between the appellant's witnesses, I attach little weight to these and I am satisfied that the witnesses gave evidence as accurately as their memories recalled. I accept that in response to question 5 of the Planning Contravention Notice of May 2014, Mr Stanley misunderstood the question and only provided answers in respect of the site relating to his ownership.
30. In respect of the absence of the caravan on the 2008 aerial photograph (Document 3), it is plausible that it had been removed temporarily by the appellant but in any event its temporary removal is not a defining element of the use of the land as a leisure plot with ancillary development.
31. The Council's case is not based on any consideration of an intensification of use such as to constitute a material change of use, but that a material change of use has occurred from either a nil use or a garden detached from a dwelling to a leisure use.
32. The intentions of the appellant when acquiring the land are irrelevant to an appeal on ground (d) which relies on factual evidence regarding the use of land.
33. For the above reasons, I do not consider that the appellant has proven on the balance of probability that no material change of use requiring planning permission has occurred since 23 September 2004. The evidence indicates that a material change of use occurred in or around 2009/2010 from use as a garden detached from a dwelling to use as a leisure plot with ancillary development. As this represents development for which planning permission is required, the current use of the land is unauthorised.
34. The appeal on ground (g) therefore fails.

The appeal on ground (f)

35. An appeal on this ground is that the steps exceed what is necessary to remedy the breach of planning control.
36. I have already concluded on the appellant's assertion that the steps 2-7 do not remedy the breach alleged or go beyond the remit of what a notice can properly require.
37. I have had regard to case law referred to by the parties including *Murfitt v SSE [1980] JPL 598*, where it was established that an enforcement directed at a use can require the removal of ancillary operational development intended to facilitate the unlawful use; *Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115* where it was held that the question as to what steps were required to remedy the breach would depend on the facts of the case; and *Wealden DC v SSE and Day [1998] JPL 268* relating to the stationing of a caravan not being a material change of use in itself but the purpose for which a caravan is stationed should be considered.
38. The appellant points out that the notice cannot prohibit activities in connection with the lawful garden use and the steps cannot be directed at preventing potential future breaches.
39. I conclude that the requirements do not exceed what is necessary to remedy the breach of planning control and do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with.
40. The appeal on ground (f) fails.

The appeal on ground (g)

41. An appeal on this ground is that the compliance period is too short. The appellant claims that he would need in the region of 12 months if not longer, to comply with the notice due to the nature of his physically demanding and time-consuming employment.
42. The three month compliance period specified in the notice would in my view place the appellant in some difficulty bearing in mind his personal circumstances. However, a compliance period of 12 months appears to be an unnecessarily long period for the steps to be carried out bearing in mind the harm that the unauthorised leisure use and ancillary development continues to have on the character and appearance of the area. I note paragraph 4.28 in the appellant's Statement of Case that 'none of the structures are fixed to the land and all can be removed in a short period of time should the need arise' and that at paragraph 4.52, a compliance period of 6 months was requested.
43. In the light of the above I consider that a compliance period of 6 months to be more appropriate and I will vary the compliance period of the notice to this effect.
44. The appeal on ground (g) succeeds.

Conclusion

45. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice variations.

Formal Decision

46. I direct that the enforcement notice be varied by:

The deletion of the words 'Re-instate the land to its original undeveloped condition prior to the breach of planning control' in step 7 of the requirements of the notice and their replacement with the words 'Re-instate the land to its condition prior to the breach of planning control';

and

The deletion of the words '3 months after this notice takes effect' in the Time for Compliance with the words '6 months after this notice takes effect'

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

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT: Mr S Stemp of Counsel, instructed by K Oliver

He called

Mr L McGowan	Gardener and roofer
Ms N Hardy	Appellant's partner
Mr L Stanley	Appellant
Mr K Oliver BA Hons	Principal Town Planner, the Town Planning
T&CP MRTPI	Experts

FOR THE LOCAL PLANNING AUTHORITY: Mr N Leach, Solicitor to the Council

He called

Mr S Andrews BA Hons	Senior Enforcement Planner
Dip TP MRTPI	

INTERESTED PERSONS:

None

DOCUMENTS

- 1 Opening on behalf of the appellant
- 2 Crawley BC v Hickmet Ltd (1997) 75 P&CR 500 (appellant)
- 3 Enlarged aerial photographs for 2005, 2008, 2010 and 2013 (LPA)
- 4 Closing on behalf of the appellant
- 5 Shephard and Love v SSE and Ashford BC [1992] JPL 827 (LPA)