
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 4 August 2021

Appeal Ref: APP/B9506/C/21/3266195

Land at Mount Pleasant Lane, Lymington SO41 8LS

- 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 Peter Curtis against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 25 November 2020.
- The breach of planning control as alleged in the notice is "Without planning permission i. The material change of use of the land affected comprising a single woodland to a mixed use of woodland and individual plots for leisure/recreation including overnight accommodation. ii. The material change of use of the land affected for the stationing of a caravan for storage and recreational purposes in the approximate location of plots 7 and 8 shown shaded green on the plan attached to this Notice. iii. The material change of use of the land affected for the stationing of vehicles used as sleeping accommodation for recreational purposes in the approximate location of plot 4 shown shaded blue on the plan attached to this Notice. iv. An engineering operation comprising the formation of means of access onto a highway in the approximate locations of plots 4 (shown shaded blue on the plan attached to this Notice) and 7 and 8 (shown shaded green on the plan attached to this Notice). v. The formation of hard surfacing in the location of plot 4 (shown shaded blue on the plan attached to this Notice) vi. The formation of a track in the approximate location of plot 4 shown shaded blue on the plan attached to this Notice.
- The requirements of the notice are: 5.1 Permanently cease the use of the land affected as individual leisure/recreation plots and overnight accommodation. 5.2 Permanently remove any fences, walls or other means of enclosure (including but not exclusively the fencing shown in the approximate location of plot 4 shaded blue on the plan attached to this Notice). 5.3 Permanently remove any structures, chattels or items associated with or facilitating the use of the land as leisure plots from the land affected (for the avoidance of doubt this includes any recreational equipment, furniture, artificial pathways and other items unrelated to the use of land as a woodland). 5.4 Cease the use of the land for the stationing or storage of caravans. 5.5 Permanently remove all caravans (any vehicle adapted for human habitation) from the land affected. 5.6 Cease the use of the land for the stationing or storage of vehicles. 5.7 Permanently remove all vehicles stationed or stored on the land affected. 5.8 Permanently remove all materials used to provide hard surfacing from plot 4 in the approximate location shown shaded blue on the plan attached to this Notice. 5.9 Permanently remove the access points onto the highway to plot 4 (in the approximate location shown shaded blue on the plan attached to this Notice) and plots 7 and 8 (in the approximate location shown shaded green on the plan attached to this Notice). 5.10 Restore the land referred to at 5.2 to 5.9 to its former level and condition including restoring the earth bunds which defined the boundary with the highway prior to the formation of the accesses referred to at 5.9.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the Enforcement Notice (EN) is upheld.

Costs

2. A costs application made by Mr Curtis against the New Forest National Park Authority (NPA) is the subject of a separate decision.

Preliminary Matters

3. The land attacked in the EN is part of a more extensive area of woodland as shown in the NPA statement. However, the land subject of the EN was purchased as one unit by Green Grass Investments in 2018 and the whole of the land is covered by a Tree Preservation Order. It is bounded by a road along the longest Southwest boundary and by a railway line along the Northeast boundary. To the Northwest there is land referred to as Everglade Farm and to the Southeast lies a residential property. Since 2018 the site has been subdivided into smaller plots which have been subsequently sold to a variety of different owners.
4. Some of the new owners are operating their plots to accord with planning advice given by the NPA which sought to avoid a material change of use occurring across the whole site. However, some are not and whilst subdivision of the site did not necessarily lead to a material change of use, because of the level of recreational and leisure uses, together with the operational development and woodland management that was carried out, the NPA has concluded that a material change of use has now occurred to a mixed use of woodland and individual plots for leisure/recreation including overnight accommodation. I have no substantive evidence to show this is not the case.
5. The NPA is clearly concerned about the change of use and activities across the whole of the land. There is no evidence, apart from the change of ownership of part of the woodland on the area known as plot 1, which is now owned by the appellant, that as a matter of fact and degree this has itself created a new separate planning unit physically separate and distinct from, or is occupied for different and unrelated purposes, the mixed use alleged in the EN. As I understand it, plot 1 has a woodland use and it is therefore part of the mixed use of the land attacked by the EN.
6. Moreover, the Courts have held that it is not always necessary to define a "planning unit" when the allegation is a change of use, since the notice is directed to the activities taking place. Also, whilst I am not suggesting that the appellant intends to carry out operational development or use his land in any other way than as woodland, a local planning authority is entitled to anticipate changes to defeat the operation of the notice by enforcing against the land as a whole. I shall consider the grounds of appeal pleaded accordingly.
7. I am aware of s70c of the Town and Country Planning Act 1990 and the concern raised that if the EN is upheld as it is, the appellant may be prevented from applying for planning permission for development on his land due to the pre-existing EN. However, that is a discretionary power of the LPA and it would also depend on whether the granting of planning permission for the development would involve granting, whether in relation to the whole or any

part of the land to which the EN relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control. Given these circumstances, this is a matter between the appellant and the NPA if the situation arises in the future, and it does not prevent me from upholding the EN or finding any differently under the specific grounds of appeal pleaded. Whether or not Human Rights and the peaceful enjoyment of the appellant's land would be infringed by the NPA exercising the discretion under s70c is also a matter for future consideration away from this appeal. Finally, on this point, s70c relates to the power to decline to determine retrospective applications for development already carried out. If the appellant does not do this, the potential constraint of s70c falls away anyway.

8. Provided the appellant is not carrying out activities related to the breaches of planning control in the EN on the land he owns, there is no evidence to substantiate how or why he could be liable to prosecution for the potential failure of others to not comply with the requirements of the EN. I note that the NPA fairly and reasonably referred to how the requirements of the EN would be unlikely to apply to individual plot owners if the alleged breaches of planning control had not occurred on their plots. Furthermore, the NPA has also pointed out the provisions of s172A of the 1990 Act whereby the LPA can give assurances that a person affected by a notice is not a risk of prosecution in connection with the EN. Under the current circumstances there would appear to be no hindrance to the issue of such a letter of assurance, although that is a matter between the NPA and the appellant away from this appeal.
9. The appellant's evidence refers to there not being a breach of planning control, albeit only on the land that he owns. I consider that such an argument is a 'hidden' appeal under s174(2)(c) of the Act which is "that those matters (if they occurred) do not constitute a breach of planning control. I shall take account of such an argument below. This would be a fair approach and would not cause injustice to the NPA as the evidence is not new and it was submitted with the original appeal.
10. In legal grounds of appeal, such as under s174(2)(b) and (c), the burden of proof to make out the case successfully rests firmly with the appellant.

The ground (b) and 'hidden ground (c) appeals

11. I again note the case made that the matters alleged to have taken place have not occurred on plot 1. However, given what I have set out above, as a matter of fact, those matters have occurred on the land attacked in the EN. There is no evidence to say otherwise. There may not be activities that constitute a breach of planning control on plot 1, but that does not mean, as a matter of fact and degree, that there has not been a breach of planning control across the EN land. The appellant has not discharged the burden upon him to show that this is not the case. Consequently, the ground (b) and the hidden ground (c) appeals fail.

The ground (e) appeal

12. Plot 1 is part of the land covered by the EN and the appellant is the owner. There is no evidence that the EN was not properly served on the appellant and he is, in any event, clearly aware of the EN because of the appeal currently before me. Consideration of whether it was expedient for the NPA to issue the

EN is a matter for judicial review. The requirements of s172 of the 1990 Act were followed. The ground (e) appeal therefore fails.

The ground (f) appeal

13. In short, the EN alleges development by a material change of use with associated operational development on the whole of the land. The requirements seek to cease the unauthorised change of use and for associated operational development, caravans and chattels to be removed, and for land to be put back to previous levels. It is clear on this basis that the purpose of the EN is to remedy the breach of planning control by discontinuing the use of the land and restoring it back to its condition before the breach took place under s173(4)(a) of the 1990 Act. The steps in the EN do no more and no less than seeking to achieve the purpose of the EN. As such, the steps required to be taken by the EN are not excessive. The ground (f) appeal does not succeed.

Conclusion

14. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed and the EN upheld.

Gareth Symons

INSPECTOR