



Appeal Decision

Site visit made on 17 July 2013

by Martin Joyce DipTP MRTPI

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

Decision date: 6 August 2013

Appeal Ref: APP/B3410/C/12/2189849

Land known as Poppyfields, adjacent to Willowbrook Farm, Lichfield Road, Wychnor, Staffordshire DE13 7BA

- 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 Leigh Shackles against an enforcement notice issued by the East Staffordshire Borough Council.
- The Council's reference is ENF/2012/00301.
- The notice was issued on 6 December 2012.
- The breach of planning control as alleged in the notice is the change of use of the land from agricultural to the siting of a mobile home and poly tunnel for residential purposes without planning permission.
- The requirements of the notice are to:
 - (1) Cease using any part of the land for residential purposes; and,
 - (2) Permanently remove the mobile home and poly tunnel.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in Section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. As 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.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Matters Concerning the Notice

1. There are two matters concerning the notice that require attention with a view to consideration as to whether correction is required, and could be made without causing injustice. Firstly, the notice concerns an alleged unauthorised material change of use of land but it does not specify the period within which such development has taken place. Time limits for enforcement action are set out in Section 171B of the Town and Country Planning Act 1990 (the Act) and provide that such action in respect of a material change of use may not be taken after the end of ten years beginning with the date on which the use started.
2. It is normal for an enforcement notice to state, within the reasons for its issue, the relevant period within which the alleged breach of planning control has taken place, albeit that it is not a formal requirement having regard to the provisions of Section 173 of the Act. Such specification may, however, assist an appellant in deciding whether to appeal under Section 174(d) of the Act, in relation to the question of whether or not it was too late for the Council to take enforcement action.

3. In this case, there is no doubt that the alleged breach of planning control took place within the ten years preceding the date of issue of the notice. The Council's statement that the use began in or around September 2012 is not disputed thus no prejudice has been caused by the omission of a sentence informing the recipients of the notice of the time period within which the alleged breach of control has taken place. Nevertheless, I intend to correct the notice, using the powers available to me under Section 176(1) of the Act, so as to include this normal informative.
4. On a second matter, the use of the word "permanently" in the second requirement is both unnecessary and inappropriate having regard to the provisions of Section 181(1) of the Act, which state that compliance with an enforcement notice shall not discharge the notice. No injustice would be caused by deletion of this word. I shall use the powers of correction available to me under Section 176(1) of the Act accordingly in respect of both matters.

THE APPEAL ON GROUNDS (b) and (c)

5. I shall deal with these grounds together as the evidence and submissions made by both parties overlap to some extent, and it is more logical to consider them in this way. On ground (b), the appellant contends that he has not sited a mobile home on the land, or used a poly tunnel for residential purposes, or changed the use of the land, and that he has no intention of so doing. With regard to ground (c) the appellant states that the motor home is not a fixed structure and is only need for a temporary period from July 2012 to July 2013, pending approval for a shed structure on the land. The vehicle, which is taxed and insured, with an MOT certificate, can be driven off the site at any time. The poly tunnel is also only a temporary measure until a shed is built but, in any event, it can easily be moved around the site. The Council, however, have produced photographic evidence of the siting of a motor home and poly tunnel on the land, and the use of the latter for the storage of domestic items. They also contend that the poly tunnel is neither temporary nor a chattel, and that the mobile home has clearly been used for sleeping in, therefore a change of use has occurred.
6. The burden of proof on these grounds lies with the appellant. He has to show, on the balance of probabilities, that the matters alleged in the notice have not taken place as a matter of fact, or that planning permission is not required for any development that has taken place. In this case, however, it is quite clear that a poly tunnel and a mobile home, in the form of a Peugeot Boxer motor home, have been sited on the land. Indeed they were still present at the date of my site visit with the motor home being clearly used for sleeping, eating and day-to-day living purposes. I also noted that it was not displaying a tax disc.
7. The motor home falls within the definition of a caravan or mobile home by virtue of the provisions of Section 29 of the Caravan Sites and Control of Development Act 1960 which defines a "caravan" as "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicles or trailer) and *any motor vehicle so designed or adapted*" (*my emphasis*). The motor home used by the appellant at the appeal site is, therefore, a caravan or mobile home as a matter of fact and it has been sited on the land and used, on the appellant's own evidence, for sleeping purposes to avoid having to travel to and from the site each day.

8. As for the poly tunnel, the allegation appears to be based on a single site visit made by a Council officer on 10 September 2012. The photograph shows a number of domestic items within the poly tunnel, including a bicycle and a small barbecue. The appellant draws attention to the fact that a work bench, field generator and various tools are also there, and claims that they are used for work on the land. He also says that the domestic items are being dried out in the structure following flooding on the land, which lies within a flood plain.
9. Neither case is particularly satisfactory, as reliance on a single site visit can hardly give a true picture of regular use of the poly tunnel for residential purposes. Moreover, the appellant's explanation could be plausible, albeit that he has not provided any other evidence of usage of the poly tunnel at other times and no explanation of what the tools and generator were being used for. I am also mindful of the fact that it is an easily moved structure not fixed permanently to the ground; indeed it has been sited in several locations around the appeal site.
10. However, the notice does not allege operational development, rather it alleges a material change of use of the land from agriculture to the siting of a mobile home and poly tunnel used for residential purposes. Moreover, I note that the notice does not allege a mixed use to include any continuing agricultural use, and no evidence has been provided by the appellant as to such use of the land, other than an intended use of the poly tunnel for the propagation of saplings. Such use appears not to have commenced; at my site inspection there were no plants in the poly tunnel, and only a few small plants in pots outside. A small tractor and trailer were also on the site, and some tools and other equipment in a shed that has now been erected on the land. However, the majority of the site is overgrown and weed infested, with no evidence of any cultivation.
11. Siting of the motor home and the poly tunnel does not, therefore, appear, on the balance of probabilities, to have been in connection with any agricultural use, yet it is clear that there has, as a matter of fact, been a residential use of the land. Therefore, whilst siting of a moveable structure in connection with a lawful use of the land for agricultural or forestry purposes may not need planning permission, that is not what has happened on the appeal site.
12. Drawing all of these matters together, I conclude that, on ground (b), a material change of use of the land has occurred as a matter of fact through the siting of a mobile home and a poly tunnel used for residential purposes. On ground (c), there has been no grant of planning permission for such residential use, and there is no claim as to any continuing agricultural, horticultural or forestry use, notwithstanding some vague suggestions of intention to grow saplings by the appellant. The material change of use alleged requires planning permission which has not been granted. It follows, therefore, that the appeals on grounds (b) and (c) fail.

THE APPEAL ON GROUND (f)

13. On ground (f) the appellant suggests that the poly tunnel and mobile home could be sited in a less conspicuous part of the site, albeit that this would reduce the security and trespass-deterrent usefulness of the two items. However, a requirement to move the motor home and poly tunnel to another location would not remedy the breach of planning control that has occurred, as they would still remain on the site and the unauthorised use would continue.

This would, therefore, be tantamount to a grant of planning permission, without due consideration of the planning merits of the use. That cannot take place as the required fee for the consideration of the deemed planning application under Section 177(5) of the Act.

14. In all these circumstances I find that the requirements of the notice are entirely reasonable, as they would secure the cessation of the unauthorised residential use on a site in the open countryside. The appeal on ground (f) fails.

THE APPEAL ON GROUND (g)

15. On this ground the appellant seeks an extension of the time period for compliance until the end of July 2013, or earlier if his application for the siting of a shed on the site is approved.
16. In this context, a timber shed, built so as to allow the passage of flood water underneath, has now been erected on the site, albeit without a grant of planning permission. Moreover, the likely date of issue of this appeal, coupled with the current time period for compliance of 30 days, would mean that the notice would not come into effect until after the end of August 2013. I see no reason, therefore, for any further extension of that time period, although the Council does have the power to vary the notice, and extend that period, under Section 173A(1)(b) of the Act if it considers it reasonable to do so. The appeal on ground (g) therefore fails.

Other Matters

17. All other matters raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main grounds and issues of this appeal.

Conclusions

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

FORMAL DECISION

19. The enforcement notice is corrected by:
- a) The insertion, in paragraph 4, of the following new sub-paragraph after the words "the following reasons:":
"(1) It appears to the Council that the above breach of planning control has taken place within the last ten years."
 - b) The consequent re-numbering of the following sub-paragraphs (1), (2), (3), (4) and (5) of paragraph 4 as sub-paragraphs (2), (3), (4), (5) and (6);
and,
 - c) The deletion, in paragraph 5(2) of the word "Permanently".
20. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE – CHANGE OF USE

Issued to:

Issued by: East Staffordshire Borough Council, The Maltsters, Wetmore Road, Burton upon Trent, Staffordshire DE14 1LS

1. **This is a formal notice** which is issued by the Council, because it appears to it that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. It considers that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of this notice contains important additional information.

2. The land to which this notice relates

The land known as Poppyfields, adjacent to Willowbrook Farm, Lichfield Road, Wychnor, Staffordshire shown edged in red on the attached plan ("the Land").

3. The matters which appear to constitute the breach of planning control

Change of use of the Land from agricultural to the siting of a mobile home and poly tunnel for residential purposes without planning permission.

4. Reasons for issuing this notice

The Council considers it expedient to issue this notice for the following reasons:

- (1) The siting of the mobile home is an incongruous visual intrusion in the open countryside which is unnecessary to the efficient working of the rural economy or development which is otherwise appropriate in the countryside.
- (2) The siting of the mobile home and use of the land and poly tunnel for residential purposes constitutes unnecessary and unsustainable development in the countryside. The mobile home and poly tunnel occupies a site well outside any development boundary defined in the Local Plan where the absence of any immediate local facilities would necessitate use of private motor vehicles as the predominant mode of transport.
- (3) There is no evidence to demonstrate that the mobile home and use of the land for residential purposes is not at unacceptable risk of flooding, or unacceptably increases flood risk in the adjoining locality.

- (4) The development is contrary to Saved Policy NE1 of the East Staffordshire Local Plan, Saved Policies D4, H11 and NC1 of the Staffordshire Structure Plan and the National Planning Policy Framework (in particular Paragraphs 6, 7, 8, 9, 11, 14, 17, 55 and 103).
- (5) The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

5. What you are required to do

- (1) Cease using any part of the Land for residential purposes
- (2) Permanently remove the mobile home and poly tunnel

6. Time for compliance

30 days beginning with the day on which this notice takes effect.

7. When this notice takes effect

This notice takes effect on 6th January 2013 unless an appeal is made against it beforehand.

Dated: 6th December 2012

Signed:

Legal Services Manager (Solicitor)
(the Council's authorised officer)

on behalf of: East Staffordshire Borough Council, The Maltsters, Wetmore Road, Burton upon Trent, Staffordshire DE14 1LS

Annex

YOUR RIGHT OF APPEAL

If you want to appeal against this enforcement notice you can do it:-

- On-line at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs); or
- By getting enforcement appeal forms by phoning the Planning Inspectorate on 0303 444 5000 or by emailing them at enquiries@pins.gsi.gov.uk

You must make sure that they receive your appeal before the effective date on the enforcement notice.

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

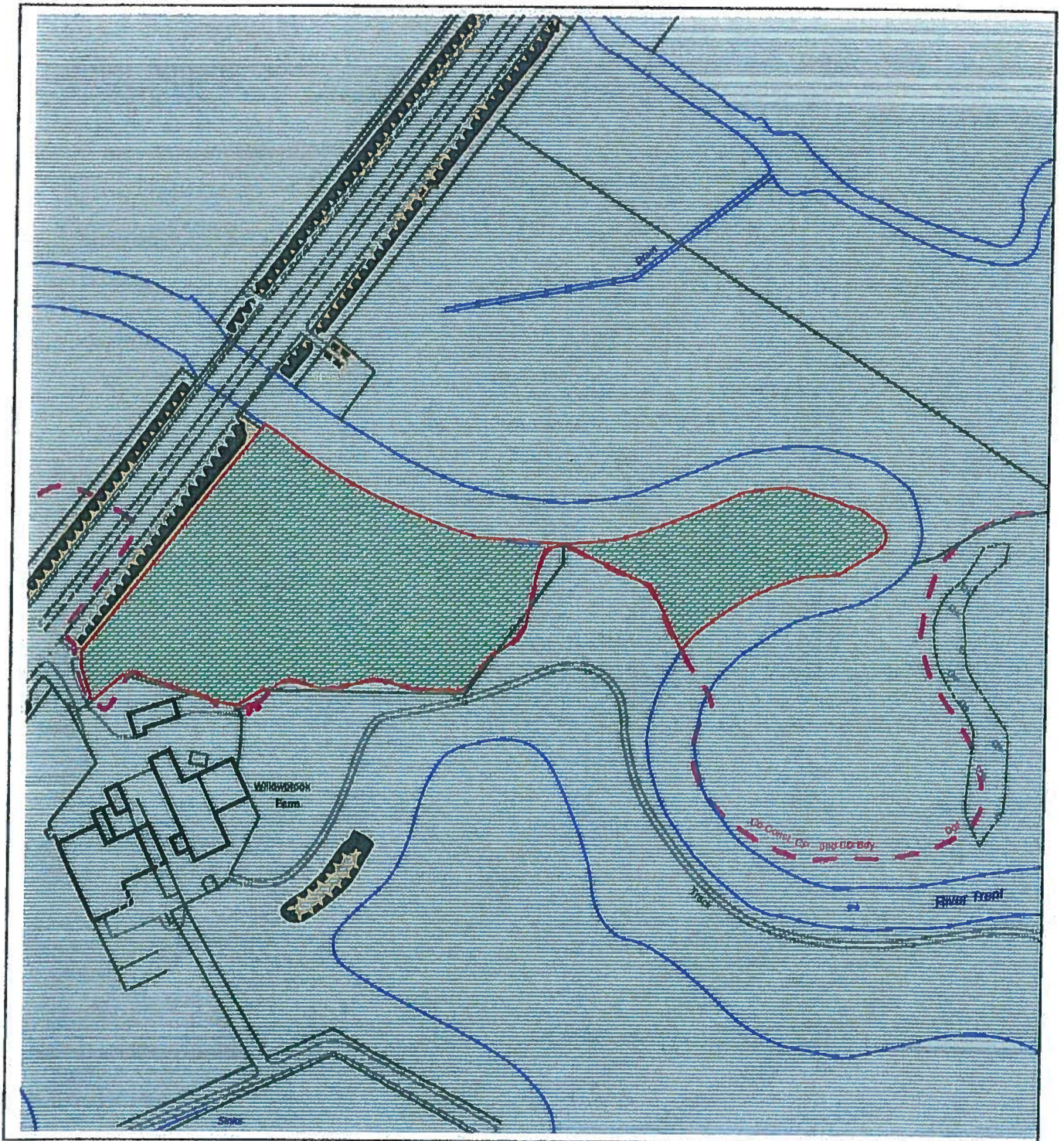
- The name of the local planning authority
- The site address
- Your address
- The effective date of the enforcement notice

The Planning Inspectorate must receive this before the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of this notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of this notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

NORTHGATE SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.