



Appeal Decision

Site Inspection on 23 April 2010

By **G F Self MA MSc FRTPi**

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



Appeal Reference: APP/Y1138/C/10/2121103

Land at NGR 291301 112586; Withleigh Lane, Withleigh, Tiverton

- The appeal is by Mr Mark Arthurs. It is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, against an enforcement notice issued by Mid Devon District Council.
- The council's reference is: ENF/06/00038/NUCU.
- The notice is dated 1 December 2009.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of a single storey shed, in the approximate position outlined blue on that [*sic*] attached drawing numbered ENF/06/00038/UDRU".
- The requirements of the notice are:
 1. Demolish the shed.
 2. Remove all materials resulting from the demolition of the shed from the land.
- The period for compliance is three months.
- The appeal was made on grounds (a) and (g) as set out in Section 174(2) of the 1990 Act.

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

Costs

1. An application has been made on the appellant's behalf for an award of costs against the District Council. That application is the subject of a separate decision notice. The costs application was made at a fairly late stage in the proceedings and I was not aware of it until after the site inspection; it was then necessary in the interests of fairness to allow time for the planning authority to submit a written response, and then for the appellant to have the opportunity of final comments, which were submitted on 14 May. In order to issue the appeal and costs decisions at the same time, the decision on this appeal has been delayed and so is later than the estimate I gave to the parties at the site inspection.

The Enforcement Notice and Plan

2. One of the arguments put forward for the appellant is that the appeal site is incorrectly identified in the enforcement notice. The basis of this argument is that the red line on the plan attached to the notice embraces all the land owned by Mr Arthurs, whereas the planning unit within which the disputed building is located is much smaller.
3. This aspect of the appellant's case is misguided. The "planning unit" (which, as the appellant's agent well knows, is a concept arising from Court judgments) is potentially relevant when considering the use of land, particularly when deciding

whether a material change of use has occurred. The enforcement notice subject to this appeal is directed at "operational development" - the construction of a building - not at the use of land. Some of the appellant's arguments on grounds (a) and (g) relate to the use of the building and adjacent land, but that does not mean that the notice or attached plan has to be corrected. In summary, the building which is the subject of the enforcement action is identified adequately by the enforcement notice and plan. There is no need for the correction suggested for the appellant.

4. However, I shall make three corrections to the allegation. I shall amend the reference to the drawing number ending "UDRU", because the reference number on the plan attached to the enforcement notice actually ends with the letters "UDR". This mistake has not caused any difficulty for the appellant; indeed, it appears not to have been noticed by either side until I sought to verify at the site inspection that I had the correct plan, so I am satisfied that I can make the correction (using the powers available to me under Section 176 of the 1990 Act) without any injustice arising. I shall also take the opportunity to correct "that" to "the" in the text of the allegation which refers to the plan.
5. The third correction relates to the site address. The address specified in the enforcement notice is "Witleigh Lane, Tiverton". The heading to the council's appeal statement gives the site address after the grid reference as "Witleigh Lane, Witleigh, Tiverton". The latter appears to be the more correct address, as the site is close to Witleigh village and several miles from Tiverton. Again, the correction can be made without causing injustice since all parties were well aware of the site's location.

Ground (a)

6. Under this ground of appeal, planning permission is sought for the development enforced against. Part of the appellant's case is that the building is essential for the maintenance, repair and parking of vehicles for purposes ancillary to the lawful mixed use of the appeal site. The appellant also contends that this mixed use comprises use for (in brief): a builder's yard; maintenance and repair of plant, machinery, etc used for land upkeep; maintenance and repair of vehicles, plant, etc used in the builder's business; and parking vehicles on the site for purposes ancillary to that mixed use. The District Council do not accept that the use described by the appellant is lawful.
7. A written representations appeal relating to the construction of a building is not an appropriate way of determining whether the use of land is lawful (and the same would also apply to the hearing procedure which was requested for the appellant). The appellant's claim about lawful use rights, which the council dispute, could only be properly decided in response to an application for a certificate of lawfulness, and if necessary by an inquiry where evidence could be taken on oath and be subject to cross-examination. Nevertheless I comment on this matter as it is part of the appellant's case.
8. The appellant's argument that the building and adjacent land is a separate planning unit from other land he occupies, where I saw among other things various off-road vehicles, is artificial. There is a degree of physical separation, but the land nearest to Witleigh Lane is used to reach the area to the south and south-east, so the uses overlap. The evidence from my own inspection strongly suggests that the claim made on the appellant's behalf about vehicles only being "parked" and not "stored" is also unfounded - the numerous unroadworthy and unlicensed vehicles I saw cannot realistically be described as being "parked". I have no reason to believe that the use of the land occupied by Mr Arthurs has

materially changed in the time between the enforcement notice being issued and my inspection.

9. The available evidence suggests to me that the disputed building and adjacent land may be at least partly used for vehicle-related leisure or hobby purposes rather than for, or in addition to, a builder's yard and other purposes described in the appellant's written statements. During discussions with the council in 2006, Mr Arthurs apparently said that the two then existing uses of his land were keeping a pony and use in connection with a hobby involving off-road vehicles. The large quantity of tyres which I saw on the adjacent land occupied by Mr Arthurs to the north-west indicates that there are close links between the activities on these parcels of land and that for practical purposes they are one unit of occupation.
10. In paragraph 6 above, I summarised the appellant's description of one component of the mixed use of the land as: maintenance and repair of plant, machinery, etc used for land upkeep. The full description claimed for the appellant is: "the maintenance and repair of plant, machinery, tractors and other vehicles used for the maintenance and upkeep of this and the adjoining land owned by the appellant". That description does not deal with the key point, which is the purpose for which the land is being "maintained" or "kept up". The appellant's evidence casts further doubt on the matter by referring to "businesses" (plural) but only referring to one "business" (the builder's yard) in the four-part description of the mixed use. The statement that equipment is kept on one piece of Mr Arthurs' land partly for maintaining his adjoining land also illustrates the artificial nature of the suggestion that there are separate planning units.
11. In summary, the use of the land within which the building stands, and the use of the building itself, appears to be unauthorised. The appellant's argument that the use is lawful is not supported by the evidence and is anyway peripheral as the enforcement action is directed at the operational development involved in constructing the building. At the very least, the onus of proof (on the balance of probability) is on the appellant with regard to the lawfulness of any existing use; and the appellant has not come anywhere near discharging that onus.
12. Turning to the disputed building itself, this was erected as a replacement for a building which had probably become "immune" and therefore lawful, but was largely destroyed in a storm. The replacement building is apparently a little smaller than the previous one, and is partly obscured from view behind trees or hedging or other structures. I also note the appellant's point that views directly into the site from Witleigh Lane are largely prevented by the substantial metal entrance gates.
13. These are all weak arguments for permitting the retention of the building. Once the previous building had ceased to exist, the construction of the new building involved new development, the merits of which fell to be judged against current relevant policy criteria. The development involved a substantial building in the countryside. Although it is part of a group of other structures and is partly screened from publicly accessible viewpoints, it is not invisible; and it takes away some of the area's rural character. There is no evidence that the unsightly gates adjacent to the highway at the site entrance have been the subject of any planning application or permission. The same applies to an earth embankment which appears to have been recently constructed south-east of the building (and does not appear to be a "means of enclosure"). The fact that the disputed building may be partly screened by gates or other structures which themselves appear to be unauthorised is not a compelling point in support of the appeal.

14. Although some of the policies quoted by the council are not directly relevant, the council's case is strengthened by underlying policy. The general aim of development plan policy for this area is to resist urban development in the countryside. Some rural development is regarded as acceptable, for example where the rural character of the area would not be harmed, where access is satisfactory and where the development would be for an agricultural purpose. The disputed building is outside and not adjacent to any village or town, has very poor vehicular access, detracts from the area's rural character and does not serve an agricultural purpose. This building does not meet applicable policy criteria.
15. It is claimed for the appellant that the building is of a type and design commonly employed for agricultural buildings. That is only true of some of the design features - the large metal doors, for example, are not typical of agricultural buildings. In any case, the building was not erected for an agricultural purpose, and any similarity it might have to agricultural structures is not a good reason for permitting it.
16. According to the appellant the building is essential for the use of the site by a small business which provides employment in a rural area. Apart from the references to a builder's yard and to "work currently performed inside the shed", there is scant evidence about the business or businesses being operated from the appeal site or the amount of employment generated. If anything, the suggestion that the building helps to consolidate and support the operation of a builder's yard here is a reason for refusing permission, since this rural site with very poor access is most unsuitable for such a use.
17. I conclude that planning permission should not be granted. Therefore the appeal on ground (a) does not succeed.

Ground (g)

18. Under this ground of appeal it is claimed that the period for compliance is unreasonably short. The basis of the appellant's case is that the three month period specified in the enforcement notice takes no account of the need to arrange alternative accommodation or for business re-organisation. The council suggest that Mr Arthurs could use other buildings he owns to accommodate the maintenance work carried out in the disputed building.
19. The building was apparently erected in a matter of days, and the requirements of the notice could be carried out within a similar period. Looked at in that light, the three month compliance period is generous. I do not give great weight to the part of the appellant's case relating to business activity at the site, because the appellant's evidence is so vague and conflicting. For example, his case on ground (g) (in paragraphs 6.1 and 6.2 of the appeal statement) refers at one point to "a small business or self-employed person" and in the following sentence to "the businesses conducted from the site". Thus it seems that the appellant has not decided whether to claim that he is operating one business, or two or more businesses, from the site. The planning status of whatever commercial activity may be going on at the site, if any, is also at best doubtful, for the reasons explained above.
20. The council may believe that no real business was or is being operated from the site; but that does not seem to be part of their case - indeed, the council say that the mixed use of the land for purposes including a builder's yard is unauthorised. As has been pointed out for the appellant, the council did not follow the guidance in Planning Policy Guidance 18, for example about exploring alternative possibilities with the owner and seeking to agree a timetable for relocation so as to minimise disruption to small businesses. This appears to have happened

because the council delayed deciding to take enforcement action for so long that there was a risk of the building gaining immunity, so "short cuts" then became necessary.

21. The council's suggestion that other nearby buildings owned by Mr Arthurs could be used for the activities carried out in the disputed building is of questionable merit. There is no evidence that any of these buildings has planning permission for such use.
22. I conclude that both the appellant and the council have flawed cases in relation to this ground of appeal. On balance, having regard to the submissions by both sides and giving the appellant the benefit of the doubt, I have decided to extend the compliance period by an additional month, to four months. The appeal on ground (g) succeeds to that limited extent.

Formal Decision

23. I hereby direct that the enforcement notice be corrected and varied in the following ways:
- (i) by deleting the words "Withleigh Lane Tiverton" from Section 2 of the notice (headed "The Land Affected") and substituting: "Withleigh Lane, Withleigh, Tiverton";
 - (ii) by deleting from the allegation the words "that attached drawing numbered ENF/06/00038/UDRU" and substituting "the attached drawing numbered ENF/06/00038/UDR";
 - (iii) by deleting "three months" from the text specifying the period for compliance and substituting: "four months".
24. Subject to the above corrections and variation, I dismiss the appeal, uphold the enforcement notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector

