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# Appeal Decision

Site visit made on 22 November 2011

**by Mr J P Sargent BA(Hons) MA MRTPI**

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

**Decision date: 27 January 2012**

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**Appeal Ref: APP/L2820/C/11/2159357**

**Land registry parcel NN229004, north of Braybrooke Road, Braybrooke, Northamptonshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Craig Bodsworth against an enforcement notice issued by Kettering Borough Council.
  - The Council's reference is ENFO/2009/00078.
  - The notice was issued on 22 July 2011.
  - The breach of planning control as alleged in the notice is a material change of use of the land from agriculture to a mixed agricultural and residential use and for the storage of motor vehicles, together with the erection of structures that facilitate the use.
  - The requirements of the notice are
    - 1) cease the use of the land for human habitation
    - 2) cease the use of the land for the storage of vehicles and permanently remove from the land all vehicles stored thereon
    - 3) permanently remove from the land all structures, sheds, houses or shelters, whether permanent structures or not, which facilitate human habitation on the land, together with all tanks, cylinders, aerials, generators and other such equipment and domestic paraphernalia brought onto the land in association with the unauthorised use
    - 4) permanently remove from the land all foundations, footings, bases, drains which support the items to be removed under requirement (3)
    - 5) permanently remove from the land all domestic planting, shrubs, flowers associated with the unauthorised use.
  - The period for compliance with the requirements is one month for steps (1) and (2) and 2 months for steps (3), (4) and (5).
  - The appeal is proceeding on the grounds set out in section 174(2)(f) of the 1990 Act as amended. Since 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 1990 Act as amended does not fall to be considered.
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## Decision

1. I delete paragraph 5(5) from the notice as not being necessary to remedy the breach of planning control.
2. Subject to that deletion, the appeal is dismissed and the enforcement notice is upheld.

## Preliminary matters

3. Although the appellant has appealed on ground (f) only, his representations do not address that particular ground of appeal. As the appropriate fee was not paid, I cannot consider the planning merits arguments raised, such as the need for various structures to enable the land to be used for agriculture. Other

matters raised would be more appropriately considered as ground (b) or ground (c) arguments, i.e. that the matters enforced against (or some of them) have either not occurred or do not represent a breach of planning control.

4. The Council has pointed out that the appeal was not made on grounds (b) or (c) but they have been able to comment on the appellant's representations. I do not believe that they will suffer any injustice if I were to consider the appeal as if it had been made on those grounds in addition to ground (f).

### **Ground (b)**

5. The appellant says that residential use of the land and its use for storage of a spare 4x4 vehicle ceased before the enforcement notice was served. I will take that as an argument that those particular aspects of the alleged breach of control were not taking place as a matter of fact on the date when the enforcement notice was issued.
6. It is quite common for local planning authorities to issue enforcement notices after an unauthorised use has ceased so that they are able to act swiftly in the event that the use recommences. In this case, the appellant has admitted that a spare 4x4 vehicle was stored on the land and that the land was used for the purposes of human habitation for a temporary period. That being so, if an appeal had been made on ground (b) with regard to those matters, it could not have succeeded because they had occurred as a matter of fact, albeit they have ceased and are not taking place at the present time.
7. The appellant has commented further that the enforcement notice refers to the erection of structures that facilitate the unauthorised use. He claims that no structures have been built other than those needed to facilitate the agricultural use of the land.
8. The main structure is a shed with its adjoining lean-to greenhouse. It had been fitted with a TV aerial and, at the time of my visit, it included a cooker and a bed. These indicate that the shed was required at least in part for the residential use of the land and, even if this had ceased, it was still capable of being used for residential occupation. Furthermore, the claimed agricultural activities are small scale and, to some extent at least, intended rather than actual. Had an appeal on ground (b) been made on the grounds that these structures had no residential association and that, to that extent, the matters alleged in the notice had not occurred, I conclude that it would not have succeeded.

### **Ground (c)**

9. Various aspects of the appellant's representations can be regarded as ground (c) arguments. These also include the shed, which is claimed to be a temporary building permitted by Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), or alternatively that it is a moveable structure simply placed on the ground. The implication is that it does not represent operational development and its use for agricultural purposes does not constitute development as defined in s55 of the 1990 Act as amended.
10. As regards the first of the arguments, the building is not required temporarily in connection with any operations (i.e. as opposed to a use of the land for agriculture), that might lawfully be carried out on the land, so it cannot benefit

from the permission granted under the GPDO. As for the second point, the building is of a size that would make it difficult to move; it was constructed on the land rather than being brought in one piece and it sits on a base of slabs laid to prevent it sinking into the mud. It is intended to remain where it is rather than being periodically moved about on the site and therefore has a degree of permanence. I conclude that it is a building and its construction represented development within the meaning of s55 of the 1990 Act as amended. It is not permitted under any part of the GPDO and, in the absence of an express grant of planning permission for it, its construction represents a breach of planning control.

11. The appellant also suggests that the camper van is only used to provide shelter and tea-making facilities in connection with his agricultural activities. Nevertheless, the camper van was brought onto the land for use as residential accommodation. It is legitimate to require its removal in order to remedy the breach of control represented by the residential use of the land. Whether the camper van, or indeed anything else associated with the residential use that the enforcement notice requires to be removed, could then be brought back to the site for use in connection with any agricultural use of the land is not a matter for me to consider in the context of this appeal. Had an appeal on ground (c) been made in respect of these matters, I conclude that it would have failed.

### **Ground (f)**

12. Section 173(4) of the 1990 Act as amended, says the steps required by an enforcement notice are to achieve one of 2 purposes. These are either to remedy the breach of planning control that has occurred, or to remedy any injury to amenity that has been caused by the breach. An appeal under ground (f) is contending that the required steps exceed what is necessary to remedy the breach of planning control or the injury to amenity, whichever the case may be.
13. In this instance, the requirements of the notice broadly seek the cessation of the use of the land for human habitation and the storage of vehicles, and the removal of any buildings, structures, vehicles or equipment associated with those activities. Therefore, the purpose of the notice is to remedy the breach of planning control and restore the land to its former state. The planting identified as 'domestic' by the Council does not have sufficient association with the residential activity to justify its removal, and it is also limited in its extent. Therefore I delete requirement 5 as I consider it to be unnecessary to remedy the breach of planning control. However, any lesser steps than those found under requirements 1-4 would not address the unauthorised residential use and vehicle storage, and so would not meet the purpose of the notice.
14. Accordingly, based on the submissions before me I conclude that the appeal should fail.

*J P Sargent*

INSPECTOR