



Appeal Decisions

Site visit made on 8 August 2023

by **Roy Curnow MA BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th November 2023

Appeal A Ref: APP/R3325/C/22/3309700

Appeal B Ref: APP/R3325/C/22/3309701

Land South of The Old Farmhouse, Down Lane, Purtington, Chard, Somerset TA20 4DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - **Appeal A** is made by Dr Christian Wachsmuth against an enforcement notice issued by South Somerset District Council ('the Notice').
 - **Appeal B** is made by Dr Rachel Wachsmuth against an enforcement notice issued by South Somerset District Council.
 - The enforcement notice, numbered 21/00224/ENF, was issued on 20 September 2022.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the installation of foundations and creation and construction of a concrete hardstanding/pad ("the unauthorised development").
 - The requirements of the notice are: i) Remove the entire concrete hardstanding/pad from the land; ii) Remove the pipework from the land; iii) Remove the foundations associated with the unauthorised development; iv) Restore the land to its original condition prior to the unauthorised development taking place; and v) remove from the land all materials arising from the requirements of i)-iii) above.
 - The period for compliance with requirements i)-v) is 2 (two) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice, and the addition of the words "shown marked with a cross on the land outlined in red on the attached plan" to the end of section 3, 'The matters which appear to constitute the breach of planning control'

and it is varied by the deletion of "2 (two) months" and the substitution of "4 (four) months" as the period for compliance.

Subject to the corrections and variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The plan attached to the Notice by the Council was incorrect, in as much as it outlined land to the north and south of the stream when the Notice only referred to land to the south of the stream. I wrote to the parties on the matter

and the Council duly provided a revised plan, omitting the land to the north of the stream and marking the site of the hardstanding with an 'x'.

3. For their part, the Appellants submitted a plan that they say is from a title deed, though I was not given details of the title number nor a copy of the associated title deed document. It shows The Old Farmhouse and land around it. Part of the land to the south of the river, which includes the land on which the hardstanding has been constructed, is outlined in a red line. This, they say, "clearly shows the separation of the small parcel to the East from the wider field". I cannot conclude that this is the case from the evidence before me. Without a title deed document, I do not know what the meaning of the red line is and how this separates the land.
4. The Appellants also queried the meaning of the colours that land on the plan has been finished in. It is clear that this is colouring on the base mapping system used by the Council.
5. From the evidence before me, including what I saw at my site visit, the corrected plan submitted by the Council should be attached to the Notice *in lieu* of that which was originally attached.

Reasons

6. The Old Farmhouse is a substantial residential property set within a small hamlet in the open countryside. It lies on the north side of a stream, and the Appellants also own land on the south side of the stream. The development that is the subject of the Notice lies on the land to the south of the stream. That land is fairly level adjacent to the stream but rises more steeply as one moves southwards away from it. The hardstanding/pad has been laid on a terrace set into this steeper land.

Ground (c)

7. An appeal made under Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellants to make their case on the balance of probability.
8. The Appellants submitted a statutory declaration ('the declaration') in support of their case on this ground of appeal. The plan attached to the declaration shows the area of land that the Appellants refer to in their response to the Council's corrected plan submission, which I refer to above. Given the legal ramifications associated with making a declaration, it is a piece of evidence to which I attach significant weight.
9. It states that the land has been in the Appellants' ownership since August 2007, when they bought the Old Farmhouse and land to the south of the stream. At that time, that land was fenced off and used for the grazing of animals. There was, I am told, a small animal shelter on the land on a concrete base. It would appear that this is shown in the photograph entitled 'Flash flooding 1.1.2014.jpg' attached to the declaration. The declaration sets out that from 2008 animals were excluded from the land, outdoor play equipment was placed on it and it was used as a play area.
10. Latterly, in Summer 2019 a borehole was drilled on the land, and in May-June 2021 works were undertaken to extend the concrete slab on which the animal

shelter stood and, in August 2021, the north bank of the stream close to the house was reinforced.

11. During 2021 work was carried out to the hardstanding, as well as works to prevent further erosion by the river. Following "instruction" from the Council, work ceased on the land and a planning application was made. This was withdrawn and a subsequent pre-application enquiry made. The declaration states that since the cessation of the work the land became more naturalised, though car parking on a hardcored area has continued and the extended slab remains.
12. The basis of the declaration is that the land "has been used as ancillary domestic curtilage/garden to the Dwellinghouse on a continuous and uninterrupted basis since prior to January 2009". The importance of this position is expanded in their statement of case where they set out that as the use of the land has been carried out for a period of ten years, so it has become lawful. Therefore, they say, the erection of an outbuilding here would be permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, 'the GPDO'.
13. Curtilage and garden have different meanings. Whilst land used as a garden might well coincide with a building's curtilage, it does not automatically follow that land used as a garden or for purposes ancillary to the residential use of a property is its curtilage.
14. Established case law sets out that to be considered to be curtilage to The Old Farmhouse, the land would have to be used for some reasonably necessary or useful manner associated with it. This case law provides criteria for identifying curtilage, namely: (i) the physical 'layout'; (ii) the ownership past and present; and (iii) the use or function past or present. Whether land lies within a curtilage is a matter of fact and degree for the decision-maker, after deciding what weight to give to the relevant factors.
15. In terms of layout, the land is close to The Old Farmhouse, but the stream provides a strong physical boundary between the two.
16. In terms of ownership, as it is not expressly set out in the evidence, I cannot be sure that the land to the south of the stream was in the same ownership as the Old Farmhouse when the latter was purchased by the Appellants.
17. At the time they purchased the house, the declaration states that "the land to the north of the stream was in active use as domestic garden/curtilage and that portion of our existing domestic curtilage/garden to the south of the stream was a fenced off grassed paddock, used as equestrian pasture, separated from the adjoining two larger paddocks that we also own". This does not, to my mind, equate to it being part of the curtilage of The Old Farmhouse prior to their purchase. I would be of the same opinion even were it to have been shown that the land was in the same ownership when the Appellants purchased it.
18. The evidence shows that the Appellants have been using the land for domestic purposes but, as I have said, this does not mean that it is automatically within the curtilage of The Old Farmhouse.

19. As a matter of fact and degree, I find that the land on which the hardstanding has been constructed is not within the curtilage of The Old Farmhouse. This being the case, the hardstanding, nor the building that the Appellants wish to erect, cannot be held to be permitted development under Class E of Part 1 of Schedule 2 of the GPDO.
20. I have been provided with a copy of an enforcement notice that was issued by the Council on 20 September 2022. This alleged the change of use of land to the south of the stream, including that on which the hardstanding has been formed, from agricultural to residential.
21. That notice ('the mcu notice') was not appealed, and it came into effect on 28 October 2022. Its requirement was to cease the residential use of the land. The Council asserts that this means the Appellants "have therefore accepted that there has been an unauthorised change of use of the land". It is clear, from the arguments that they have put forward, that this is not the Appellants' view. Notwithstanding this, they did not appeal that Notice, and its requirement to cease the use of the land is binding. The appeal before me relates to operational development rather than the lawful use of the land.
22. For the above reasons, the Appellants fail to demonstrate on the balance of probability that there has not been a breach of planning control. For the above reasons, the appeal under Ground (c) fails.

Ground (d)

23. An appeal made under Ground (d) is that, at the date when the Notice was issued, no enforcement action could be taken in respect of the breach of planning control it alleges. Again, this is a legal ground of appeal where the onus lies with the Appellants to make their case on the balance of probability.
24. The time limits, after which immunity for unauthorised development is conferred, are set out in s171B of the Act. The Notice relates to operational development and, therefore, s171B(1) applies; it sets out that this is a period of four years beginning with the date on which the operations were substantially completed. To make their case, the Appellants would have to show that the hardstanding was substantially completed by 20 September 2018
25. The statutory declarations show that this was not the case. They state that "in June 2021 temporary hard core was laid down to allow the existing slab to be extended to its present size".
26. As the concrete hardstanding/pad, to which the Notice relates, had not been substantially completed for 4 years when the Notice was issued, so it was not immune from enforcement action. Therefore, the Ground (d) appeal fails.

Ground (a)

27. An appeal made under this Ground is that planning permission ought to be granted for the breach of planning control alleged in the Notice.
28. The Main Issue to be assessed is the effect that the development has on the character and appearance of the area.
29. Purtington is a small collection of houses set in open countryside, to the south of the A30 between Chard and Crewkerne. The landscape in the area is of

rolling hills into which steeply sided valleys have been cut by small rivers. The hamlet lies towards the upper end of the valley of a small stream. Although the area in which the appeal site is located is not covered by any landscape designation, it is, nonetheless, attractive.

30. Two narrow lanes run through Purtington; one at a lower level near the course of the stream, whilst the other runs south-westwards from it at a higher level. A steep, narrow and unmade bridleway, Rose Lane, links the two roads. It leaves the lower road close to The Old Farmhouse and runs southwards along the boundary with the land on which the hardstanding has been formed.
31. Policy EQ2 of the South Somerset Local Plan 2006-2028, adopted March 2015, ('SSLP'), sets out the Council's general approach to development proposals. It provides 12 criteria against which they will be assessed, but it is not necessary for all to be met. Criteria 2, 3, 4, 11 and 12 are those that are relevant to the effects of a development on the character and appearance of an area.
32. The hardstanding has been constructed very close to Rose Lane. It is clearly visible from that public right of way' notwithstanding the presence of trees and other vegetation', though landscaping would reduce its visual impact.
33. The siting of the concrete base in a location divorced from the area that has a lawful residential use is alien to the character of the area. Whilst properties in the area might have curtilages or gardens that are large and irregularly shaped, I have not been given evidence of an example like that which is before me where a development for residential purposes lies outside a property's curtilage.
34. I saw domestic outbuildings in a variety of forms in the area. However, they appeared to be within the gardens or curtilages of properties and not outside of them, as is the case here. The Appellants pointed out that the hardstanding has been formed "mere metres away from the neighbour's carport structure". I do not know the planning status of that structure, nor whether it lies within the curtilage of the neighbouring property. In any event, each proposal has to be assessed on its individual merits, and the construction of the hardstanding on land outside the curtilage or garden of The Old Farmhouse causes harm to the area's character and appearance that is not mitigated by the presence of another structure close-by.
35. Save for the details that I refer to, above, other I have little information regarding the building that was formerly on the land. As such, I attach little weight to arguments that it should lead to the development being allowed.
36. The appeal before me relates to the hardstanding that has been constructed. Notwithstanding this, although I do not have copies of the drawings for the building that is proposed, I was nonetheless able to see how a building erected here utilising the size of hardstanding that has been constructed would further harm the character and appearance of the area.
37. Whilst the site would allow sunlight to reach a building on the hardstanding, and thus exploit solar gain, and it is in a position where there would be no harm to neighbours' living conditions, neither is sufficient to outweigh the harm that would be caused. Although an electric charging point might be provided, there is no evidence to show that this could not be provided within the curtilage of The Old Farmhouse.

Other Matters

38. The Appellant refers to the lack of engagement by the Council. Whilst this might have been the case, this is not the forum to address the Council's procedural approach.

Conclusion on Ground(a)

39. For the above reasons, the development causes harm to the character and appearance of the area. It is, therefore, contrary to the terms of SSLP Policy SD1. It does not represent sustainable development and is therefore contrary to the terms of SSLP Policy SD1 and the terms of the National Planning Policy Framework, in particular its chapter 15.

Ground (g)

40. An appeal under this Ground is that the period allowed for compliance with the requirements of the Notice falls short of what should reasonably be allowed.

41. The Notice allows 2 months for compliance with its requirements. In their statement of case, the Appellants suggest a date of June 2023 for compliance; this is explained in their Final Comments as being 4 months based on the expected date for a decision on the appeal being February 2023.

42. The removal of the steel reinforced concrete slab will be a fairly significant undertaking. I am aware of difficulties generally in appointing contractors, and that undertaking the work when the ground is wet would be likely to be problematic.

43. In their statement, the Appellants refer to a loss of potable water supply to the dwelling arising from compliance with the Notice. The Council states that "the concrete pad, pipework and foundations does not facilitate the supply of water to the dwelling house and...would have no impact on the water supply to the property". This is not challenged by the Appellants in their Final Comments and no substantive evidence has been submitted to show that the Notice would result in the loss of potable water to the dwelling. This does not provide a compelling case to extend the period for compliance. I find similarly in respect of arguments made regarding the effects of the Covid pandemic,

44. Notwithstanding that little evidence has been provided in respect of the potable water supply, given the work involved I find that the 2-month period for compliance falls short of what is reasonable required. I will extend the period for compliance to 4 months and, to this extent, the Ground (g) appeal succeeds.

Conclusion

45. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector



Plan

This is the plan referred to in my decision dated: 27th November 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

Land at: Land South of The Old Farmhouse, Down Lane, Purtington, Chard, Somerset TA20 4DH

Reference: APP/R3325/C/22/3309700 and APP/R3325/C/22/3309701

Scale: Not to scale

