



Appeal Decision

Site visit made on 12 March 2001

by **H W J Russon DipTP MRTPI**

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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Date

25 MAR 2001



Appeal Ref: APP/X1118/C/00/1052587

Land part OS parcel 7220, Lee Cross, Mortehoe, Woolacombe, Devon.

- 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 C J Gleed against the decision of North Devon District Council to issue an enforcement notice.
- The Council's reference is ENF 2657.
- The notice was issued on 9 October 2000.
- The breach of planning control as alleged in the notice is the use of land for the holding of markets in excess of the 14 days in any calendar year permitted by Part 4, Class B of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).
- The requirements of the notice are, other than as permitted by the GPDO, cease the use of the land for the holding of markets.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Summary of Decision: The appeal is allowed and the notice is quashed.

The Appeal site and Surroundings

1. The appeal site is a large field that lies in an area of generally open countryside about 3 kilometres east of the town of Woolacombe. The land slopes gently in a northerly direction and vehicular access to the site is from a junction known as Lee Cross at the south eastern end of the field where the B3231 diverges from the B3343 Woolacombe Road. The field in question is used for the purposes of holding open air markets through the summer months.

The Ground (b) Appeal

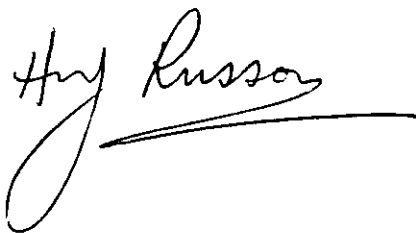
2. In their representation the Local Planning Authority refer to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) and the limit that Schedule 2, Part 4, Class B places on the number of open air markets that can be held in any one calendar year. They claim that during the period of May to September 2000 a total of 15 markets were held (one more than the 14 day maximum) as set down by the GPDO. In fact the Council argue that because some traders arrived with their vehicles the night before market day in reality this land was used for holding markets on a total of 30 days last year. On this basis there has been a clear breach of planning control.
3. I note the Council's argument in this case but I would state at the outset that I have serious reservations about their approach. There is no doubt that the appellant organised a total of 14 markets on the appeal site last year and that a 15th market had been planned but had to be

abandoned at a very early stage in the proceedings because of severe weather conditions. I accept that traders and their vehicles arrived on site together with some members of the general public. However no market stalls were erected on the land and no buying and selling took place. It seems to me therefore that it is quite wrong to argue that on this occasion a market was held on the land. Indeed it is axiomatic that before it can be said that a market has been established, actual trading must take place on the site. On this particular occasion this clearly did not occur.

4. As to the Council's concerns about traders staying with their vehicles overnight on the land, I have carefully studied the wording of Part 4, Class B of the GPDO. However I cannot accept their interpretation of the phrase "the provision on the land of any movable structures for the purposes of the permitted use." The word structure is defined in the Concise Oxford English Dictionary as being the "manner in which a building or organism or other complete whole is constructed...a supporting framework or whole of the essential parts of something." Whilst this definition would obviously relate to the market stalls and "portaloos" that are normally erected on site it cannot include the vans, lorries or other vehicles which may park here from time to time. I therefore take the view that the parking of vehicles in this manner cannot be construed as holding a market and therefore be included in the 14-day calculation for permitted development rights under Part 4 Class B.
5. In these circumstances I conclude that as a matter of fact and degree there has been no breach of planning control in this case. Consequently this appeal succeeds and I shall quash the notice.

Formal Decision

6. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed.

A handwritten signature in black ink, appearing to read "Hy Russell". The signature is written in a cursive style with a long, sweeping underline that extends to the right.