

THE ZIGZAG ROLLERCOASTER

A DIY regeneration project has lost its appeal against a planning enforcement notice served by the recently-established-but-already-nearly-bankrupt Somerset Council.

MIKE HANNIS summarises the decision and its implications.

In the latest instalment in the epic saga of Glastonbury's former Morlands site, Zigzag owner Chris Black and the site's other residents now have nine months to comply with a decision requiring them to

Permanently cease the unauthorised mixed use ... Permanently remove from the land the caravans, steel containers, chattels (including vintage industrial paraphernalia), dovecote ... domestic paraphernalia, structures and buildings ... along with any resulting debris and materials [and] Restore the land to its original condition prior to the unauthorised material change of use.

This obviously comes as a massive disappointment to the project's many supporters. To make matters worse, the huge expense of legal representation at April's five day public enquiry has been compounded by a judgement awarding partial costs against the appellant.

The decision letter, with its disproportionate emphasis on toilet arrangements, the appearance of a rat (shock horror) and alleged anti-social behaviour, is also disappointing for deploying language and assumptions only too familiar from decades of enforcement proceedings involving what is apparently now referred to as the "non-bricks and mortar community". It is a major setback, but unlikely to be the end of the story.

Permission Denied

The headline result of this appeal is that the 'ground (a)' part did not succeed. This sought to obtain planning permission for the existing 'mixed use including residential use', so its dismissal gives the Zigzag residents nine months to find alternative accommodation, not to mention moving a great deal of stuff. The reasons given are summarised below.

Character of Area

Technically there were two linked appeals, one governing the main building and its immediate curtilage, and the second the adjacent car park area. No residential permission was sought for the car park. In both appeals however the Inspector found that the existing use "harmed the character of the area":

The Zigzag Building is an attractive and distinctive modernist building which stands out in the local urban landscape ... from the outside, the site appears as a jumble of junk and DIY structures which is incongruous and visually incompatible with the modernist building behind it.

Site B (the car park) is strewn with items including containers, ramshackle structures, old vehicles, barrels of toilet waste, and piles of scrap and rubbish. It has an unclean feel and a rat crossed my path on the site visit. The site is very clearly visible from Beckery Old Road, in spite of boundary planting. It has a seriously harmful visual effect upon the street-scene and lends an unpleasant ambience to the vicinity.

Living conditions

Even though many other renovations have taken place over the last decade, there are still no mains services installed at Zigzag. The Inspector was not impressed by this, and considered the informal arrangements by which both electricity and water are supplied from the neighbouring Red Brick Building to raise issues of both reliability and safety.

She also noticed wood burners installed next to timber walls, and an apparent absence of smoke or CO2 alarms. The nearby sewage works was also a problem: "I could smell sewage at the site. This smell is unpleasant for a permanent residential use". She seemed particularly concerned though about bathrooms and toilets.

For most of the residents, there is nowhere on the site for personal washing and there are no laundry facilities on the site. This is unacceptable in terms of comfort and hygiene.

There are only two compost toilets for the whole site, the contents of which are illegally disposed of. This arrangement is insanitary and, as people have to walk across the site to use them and they are few in number, it does not meet basic human needs.

Overall, she concluded, "living conditions are inadequate for the occupiers of the site".

Pollution Risk

The Inspector found a risk of pollution arising from the current residential use, since

there is no foul drainage ... urinals possibly drain into the stream ... and the contents of the compost toilets are illegally dumped on land outside of the site.

A further pollution risk was identified from vehicle repairs and dismantling taking place in the car park area. Happily however, the Council's rather desperate attempt to include air pollution arising from wood burners was roundly rejected.

Contamination and Flood risk

Further arguments against residential use of the site concerned possible health risks from contamination of the underlying soil (dating back to the site's historical industrial use) and flood risk due to its low lying location. It was found that no adequate mitigation proposals had been put forward for either of these. Despite a flood risk assessment being submitted, apparently the 'sequential test required by NPPF para 165' had not been applied.

Loss of Employment Land

Given the site's Local Plan status as an "Employment Area with Future Capacity" (and their desire to mobilise every possible objection) Somerset Council sought to apply a policy requiring any proposed use of the site to "deliver comparable employment generation when compared to its previous factory use".



The Zigzag Building

Properly applied, such policies are an important safeguard against inappropriate commercial development of market housing on sites that could be providing jobs. The Inspector was very clear however that this is not such a case. Finding that “the proposal does not result in an unacceptable loss of land for employment” she pointed out that

Over 30 years of non-use and dilapidation is not the same as a landowner making their site vacant before applying for planning permission to “game the system”.

She also noted that while existing small businesses at Zigzag might not be making anyone rich,

the Council did not draw my attention to any policy which requires a business activity to be profitable to gain planning permission.

Arguably this does go quite some way towards establishing that some form of mixed live/work use of the building is acceptable in principle. This one small positive part of the judgement gives no comfort to those losing their home now, but could become very relevant to the inevitable future negotiations. One approach might simply be to smarten up the frontage and external areas, equip the main building with either appropriate mains services or robust offgrid equivalents, and bring the residential component indoors by providing accommodation for a realistic crew of live-in caretakers.

Crime

The most controversial and unjust finding is of “strong evidence that the existence of the site is a contributory factor to the crime occurring in the area”. Here a disingenuous chain of reasoning unfairly portrays Zigzag (ZZB) as a cause of the very problems it seeks to alleviate, and blames it for pre-existing broader issues of ‘anti-social behaviour’ in the area. The Inspector notes that Zigzag “attracts people from the non-bricks and mortar community”, defining this phrase in a footnote as meaning

“people with no fixed abode including those who live in caravans and other vehicles”. Blithely adopting the narrative offered by Somerset Council, she goes on:

Other sites nearby which have attracted the non-bricks and mortar community are Bridies Mound where the Police had found anti-social behaviour, drug taking and criminality. I heard that 10-15 Police Officers were required to evict that community and that there have been multiple evictions on the roads around the appeal site. There is also Morlands which is located on the other side of the sewage works to the ZZB which has a history of unlawful occupation, and there was also “Alchemy Alley” very close to the site, which formerly accommodated about 25-35 caravans. Double yellow lines have had to be painted on the road of “Alchemy Alley” to stop the vans parking there. Although there have been evictions, the non-bricks and mortar community continue to reside on the roads surrounding the appeal site. It is not reasonable to expect the Council to go to the expense of putting double yellow lines everywhere around the site to stop vans parking up in the absence of a highway safety justification for them.

[Zigzag] provides the types of businesses that are useful to the non-bricks and mortar community such as the bicycle repair, sale of wood burners and cheap second-hand clothes, and the provision of vehicle repair services. ... people with mental health and substance abuse problems were welcome to come to the site to find compassion and sanctuary ... social events at the ZZB, I heard, are frequented by the wider non-bricks and mortar community ... provision of such services/facilities appears to encourage this community to stay at various locations near the site.

I appreciate that Glastonbury has long been associated with the non-bricks and mortar community and that they will arrive in Glastonbury regardless of the existence of the appeal sites. However, they would not necessarily be concentrated around the actual appeal site if it did not exist. ...

In essence, the appellant’s developments are part of the wider non-bricks and mortar community. ... anti-social behaviour

from that community is off putting to local people who I heard stay clear of the area, including the nearby skate park, due to a fear of crime. This is the antithesis of community cohesion. I heard that even some Police Officers were anxious to patrol the area.

A Solution, Not A Problem

As the Council well know, this portrayal of the various sites and park-ups in the broader Beckery area as “concentrated around” Zigzag is deliberately misleading. The Inspector must surely also have been aware that the “over 30 years of non-use and dilapidation” she identifies have involved not just the Zigzag building, but much larger areas of the former Morlands site, of which Zigzag is just one part.

Over this long period, numerous informal land uses have come and gone in this post-industrial micro-landscape. Many of these have involved the presence of the ‘non-bricks and mortar community’, which in recent years has grown very significantly, as a direct consequence of dire local and national housing crises. This community includes people for whom the longstanding rejection of ‘bricks and mortar’ is a deliberate choice, but also many who for whatever reason are simply unable to find conventional housing they can afford. It includes highly creative and altruistic people, but also plenty with significant problems.

Zigzag continues to be much valued locally, not only for its role in supporting this ‘non-bricks and mortar community’ but for its bold attempt to build ‘cohesion’ by bringing it together with others. It has provided a precious space for exploring DIY solutions to poverty, exclusion, and other drivers of ‘anti social behaviour’. It may not have always done this difficult job perfectly, but it has attempted, on a shoestring, what many better-funded organisations and public authorities have consistently shied away from.

No Fallback

There are some other interesting aspects of the decision from a low impact planning perspective. Firstly the Inspector rejected the attempt under ground (f) to establish a significant ‘fallback’ position, saying

The appellant argued that it is excessive to require the removal of all the caravans, railway carriage, containers and all domestic paraphernalia and chattels as the appellant believes that these could be used for the lawful B2 Use of the land. The use of both sites is not currently B2, but a single mixed use with all its component activities. The stationing of these items could potentially be lawfully achieved if they had been stationed in connection with the lawful B2 use of the sites. However, they were brought on to the site in connection with their single mixed use. They cannot remain on the chance that the sites might return to their last lawful use at some point in the future.

More helpfully, she did clarify that ‘the requirement to restore the land to its former condition’ did not in fact require the 2,400 repaired windows in the building to be re-broken.

Only one of several shipping container-based living units on the site was found to be immune from enforcement, due to having been sufficiently adapted and anchored to qualify as a ‘building’ within the relevant timeframe to gain a Certificate

of Lawful Use. It did not however qualify as a ‘dwellinghouse’ for CLU purposes (since it has no running water, electricity or indoor toilet), meaning that while it can stay, it cannot be used for residential purposes.

In a curious aside which may be useful (or not) for container dwellers elsewhere, since none of the others had been sufficiently modified to be considered a building, she declared that “all the other containers are not buildings but caravans”. She thereby accepts that the modified containers are “designed or adapted for human habitation”, while at the same time arguing that the one which had been most comprehensively modified was not a dwelling because of its alleged lack of residential facilities.

Unreasonable?

Both parties applied for costs. Chris Black accused the Council of unreasonable behaviour leading to increased costs due to non-determination of an earlier planning application, taking enforcement action only just before the 10 year time limit expired, and general unwillingness to negotiate. These arguments were all rejected. The Council however succeeded in persuading the Inspector that it had incurred wasted expense in providing evidence concerning gypsy and traveller policy, only for the appellant to concede after proofs had been submitted that no-one on the site claimed gypsy or traveller status, making such policy irrelevant to the case. The Inspector also found that

In respect of the ground (a) appeals, the living conditions on site A were so poor that the residential element was very clearly against planning policy. Furthermore, despite having instructed both a planning consultant and a flooding expert, the Appellant did not follow the proper steps in respect of planning policy for flooding, so no realistic case was made at all. No substantive evidence was submitted on contamination or pollution. Although I found in favour of the Appellant in respect of the employment arguments, there was no realistic prospect of winning an appeal on ground (a) and it was unreasonable to pursue it.

The paragraph above (from the separate Costs Decision) is perhaps the most concerning of the whole case to date. The main Decision acknowledges that upholding the enforcement notice would result in an (albeit allegedly ‘justified’) breach of the appellants’ right to respect for their home, private and family life under Article 8 of the European Convention on Human Rights. In a case where enforcement entails eviction and homelessness, it can hardly be ‘unreasonable’ to pursue the only appeal ground which would result in this being avoided.

Chris’s own legal costs so far are around £50K. The sum he will be required to repay the Council, who were represented by an expensive barrister, will probably exceed that. With typical spirit he told *The Land* that he’s still very much in the game, and that the Council would get that money over his dead body.

Speaking of finance, our mole inside Somerset Council informs us that the authority is itself likely to go bankrupt around April 2025, just around the time Zigzag’s nine months are up. So whether enforcement will actually happen on the ground remains a very moot point. Watch this space.

Appeals APP/E3335/C/23/3333353 & 3333354: Zig Zag Building, Morland Road, Northover, Glastonbury, BA6 9FT. Inspector: Siobhan Watson