



Appeal Decision

Site visit made on 28 June 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7TH SEPTEMBER 2023

Appeal Ref: APP/U2370/C/22/3311673

Land at Ripon Hall Farm, Catterall Lane, Catterall, Lancashire, PR3 0PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Hitchen against an enforcement notice issued by Wyre Borough Council.
 - The notice, numbered MG/PLG/6, was issued on 17 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from mixed use for the purposes of agriculture and associated residential use of the farmhouse that forms part of the Land to a mixed use of agriculture, associated residential use of the farmhouse that forms part of the Land and for the siting of a caravan/mobile home (in the approximate position shown edged purple on the attached plan) for residential purposes (outside the curtilage of the said farmhouse and not incidental to the residential use of said farmhouse) together with operational development to facilitate the material change of use consisting of the erection of a post and wire fence ("Fence") (in the approximate position shown marked yellow on the attached plan), and the installation of an electric connection point.
 - The requirements of the notice are to: (i) Cease the use of the Land for the siting of a caravan/mobile home for residential purposes; (ii) Remove the caravan/mobile home from the Land in its entirety, (iii) Remove from the Land all motor vehicles associated with the use described at paragraph 5.(i) above; (iv) Remove the Fence in its entirety from the Land; (v) Remove from the Land all above ground electrical apparatus, and all paraphernalia associated with the use of the Land described as 5,(i) above and re-instate the Land to its condition prior to the aid breach of planning control.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - i) the deletion of the words "shaded pink and edged red" and replacement with the words "shown edged yellow" in paragraph 2;
 - ii) the deletion of the words "from mixed use for the purposes of agriculture and associated residential use of the farmhouse that forms part of the Land to a mixed use of agriculture and associated residential use of the farmhouse that forms part of the Land and for the siting of a caravan/mobile home (in the approximate position shown edge purple on the attached plan) for residential purposes (outside of the curtilage of the said farmhouse and not incidental to the residential use of the said farmhouse)" and the substitution of the words " for the stationing of a caravan (in the approximate position shown edged purple on the attached plan) for the purposes of human habitation as a separate residential unit" in paragraph 3: and

- iii) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. The application for costs made by the appellant is the subject of a separate decision.

Ground (c)

4. An appeal on this ground is on the basis that the matters alleged in the notice do not constitute a breach of planning control. The appellant argues that the post and wire fence which is less than 1 metre in height erected along the boundary of the track towards the adjacent agricultural fields has been erected under permitted development rights pursuant to Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended ("the GPDO").
5. In addition, the appellants say that the parking of vehicles is not a breach of planning control in itself, but as this does not form part of the alleged breach in the notice this is an argument regarding whether the steps required to be taken exceed what is necessary to remedy the breach and is properly considered under ground (f).
6. Caselaw¹ holds that where a notice is issued in respect of a material change of use and works were carried out to facilitate that change of use, the notice may require that the ancillary works are removed in order that the site is restored to its previous condition and the breach is remedied. Whilst it may be that the fence could have been permitted development under the GPDO, the only purpose of it was to create an enclosed access lane and parcel of land on which the caravan is sited, and to separate it from the wider fields. The appellant has not argued that the works were undertaken for a different and lawful use which could resume if the alleged unauthorised use of the site ceased.
7. The appeal on ground (c) does not therefore succeed.

Ground (d)

8. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The notice alleges (amongst other things) that there has been a material change of use from a mixed use for the purposes of agriculture and associated residential use of the farmhouse to a mixed use of agriculture, associated residential use of the farmhouse and for the siting of a caravan/mobile home for residential purposes.
9. Section 171B applies to a breach of planning control consisting of the material change of use of land and provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In order to be successful on this ground of appeal, it is therefore for the appellant to prove on the balance of probabilities that the mixed use for agriculture, residential farmhouse and siting of the caravan for residential

¹ Murfitt v SSE & East Cambridge DC [1980] JPL 598

purposes has taken place for a substantially uninterrupted period of at least 10 years prior to the issue of the notice. It is relevant to consider whether the Council could have taken enforcement action against this mixed use at any time in the 10 year period.

10. The Land as defined in the notice covers a large area including agricultural fields. The caravan is sited on a grassed area separated from the wider fields by a post and wire fence and hedge. This parcel of land is within the same ownership as the wider appeal site and there was originally a functional relationship between the agricultural and residential use of the farmhouse and the area used for the siting of the caravan when it was used by the appellants. The appellant has not argued that the area on which the caravan is sited is a separate planning unit but previously submitted an LDC application (reference 21/00827/LAWE) for the existing use of the land for siting of caravan for residential use and for the parking of vehicles. The LDC application related only to the land on which the caravan is sited and the grassed adjacent land and not the whole of the wider site owned by the appellant.
11. The appellant's case is that the caravan has been located on the site since at least 2006 when it was used intermittently by them for residential purposes, and that it was then occupied by him and his wife from early 2010 to June 2013. The caravan was then rented to a tenant between July 2013 and September 2021 following the refusal of the LDC application after which date it has been vacant, although the Council's evidence is that it was furnished for residential occupation when they undertook a site visit in October 2022.
12. A tenant paid rent to occupy the caravan, and there is no evidence before me that there was a family connection with the appellants, but rather that it was a commercial arrangement. I therefore find, that as a matter of fact and degree, a separate planning unit was formed at the time that the caravan began to be rented out as the occupation then differed to the ownership of the land, and the area of land on which the caravan was sited along with the access lane was distinct from the wider unit and no longer had a functional link. There was no cross-over between the uses in the fenced area around the caravan and access track and the wider holding.
13. As I have found that there are two planning units on the site, the allegation in the notice needs to be corrected. I am satisfied that the allegation can be corrected so that it refers to the stationing of a caravan for the purposes of human habitation as a separate residential unit which properly identifies the breach without causing injustice to the parties. This is because the appellant has appealed under ground (d) in any event and explained the history of use, and it was clear that the notice was concerned only with the residential caravan use. The description of the land and plan also needs to be corrected to reflect the smaller unit.
14. The material change of use of the land on which the caravan is sited and access lane therefore occurred on the date on which the appellants state that the caravan was rented i.e. July 2013. As the notice was served on 17 October 2022 the appellants have not proved a substantially uninterrupted period of use of the separate residential unit for a period of more than 10 years and the appeal on ground (d) does not succeed.

Ground (f)

15. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be to remedy any injury to amenity which has been caused by any such breach. The purpose of the notice in this case is to restore the land to its condition before the breach took place and the requirements do not therefore exceed what is necessary to remedy the breach of planning control, notwithstanding that some of the steps required may not constitute development.
16. The requirements apply in relation to the allegation in the notice, which is now the corrected allegation of the stationing of the caravan for human habitation as a separate residential unit. The requirement to remove all motor vehicles associated with the use therefore applies to the use in the corrected allegation.
17. The appeal on this ground therefore fails.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with corrections as set out above.

Zoë Franks

INSPECTOR

The Plan

