
Appeal Decision

Site visit made on 8 August 2016

by C Sherratt DipURP MRTPI

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

Decision date: 11 October 2016

Appeal Ref: APP/B3438/C/16/3145372

Land at The Stables, Douse Lane, Bradnop, Staffordshire Moorlands, ST13 7NF

- 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 Ms Tessa Tidmarsh against an enforcement notice issued by Staffordshire Moorlands District Council.
 - The enforcement notice, numbered SME/2015/00078, was issued on 19 January 2016.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, change of use of land from the keeping of horses to a mixed use consisting of:
 - (i) The keeping of horses
 - (ii) the residential use of a static caravan that is in the approximate position marked with a blue cross on the plan attached to the notice numbered DL 1 and shown in the photographs attached to the notice marked DL 2 and DL 3 (the caravan).
 2. In association with the Caravan described in 1 above the erection of a concrete block skirt around the bottom of the Caravan and the creation of a raised concrete hardstanding area directly outside of the entrance door to the Caravan that is shown in the photographs attached to the notice marked DL 2 and DL 3 (the caravan).
 - The requirements of the notice are to:
 1. Cease any residential use of the Caravan that is marked in the approximate position with a blue cross on the attached plan numbered DL 1 and shown in the attached photographs marked DL 2 and DL 3.
 2. Remove from the Land the concrete block skirt around the bottom of the Caravan and the raised concrete hard standing area directly outside of the entrance door to the Caravan that is shown in the attached photographs marked DL2 and DL3.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Preliminary Matters

1. The notice is directed at a material change of use as set out on the title of the notice. I note that the Council refer to a Planning Enforcement Order confirmed on 6 January 2016 which “allows the Council to issue an enforcement notice seeking the removal of all operational development which may or could have been used to argue that the caravan was a building”. The enforcement notice is not alleging the erection of a building. No argument is advanced by the appellant that the material change of use alleged in the notice has not occurred as a matter of fact (ground (b)) or that the caravan has become a building.
2. The stationing of a caravan itself is not development; rather it constitutes a use of land. Accordingly the requirements of the notice should require the

residential use of the land to cease. It is clear that by requiring the residential use of the caravan to cease, so too would the residential use of the land. No injustice would therefore be caused if I correct the notice to require the residential use of the land and caravan to cease.

3. The alleged breach of planning control also refers to a concrete block skirt and a raised concrete hard standing area (paragraph 3.2). However, in doing so it clarifies that this is "in association with the Caravan" rather than as separate operational development. I take this to mean in association with the residential use since the caravan can lawfully be used for purposes ancillary to the keeping of horses. For clarification paragraph 3.2 of the notice should be clear that it is referring to operational development in association with the residential use of "the land" rather than "the Caravan". The correction of the notice would not cause any injustice as it is clear that the appellant understood what development the notice is aimed at. I shall correct the notice accordingly.
4. Returning to the concrete block skirt and raised concrete hardstanding that is referred to in the allegation (rather than simply being confined to the requirements of the notice), it is clear that it was not the Council's intention for the notice to attack the material change of use of the land and operational development separately, not least because of the title of the notice and the use of the words "in association with". A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action, so that the land is restored to its condition before the breach took place (*Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630). A notice may require the land to be restored to its original condition prior to the breach of planning control occurring. Accordingly any operational development to be included in the requirements of a notice directed at a material change of use only must have been carried out to facilitate that alleged material change of use of land. I have determined the appeal accordingly.

Formal Decision

5. It is directed that the enforcement notice be corrected by:
 - the substitution of the word 'caravan' with the words 'material change of use of land' and deletion of (ii) in paragraph 3.2;
 - the insertion of the words "land and" between "the" and "caravan" in paragraph 5.1 of the notice; and

The enforcement notice is varied by the deletion of the words "the concrete block skirt around the bottom of the Caravan and" from requirement 5.2 of the notice.

6. Subject to these corrections and variations the appeal is dismissed and 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.

Reasons

Ground (d)

7. For an appeal to succeed under ground (d) the onus is on the appellant to demonstrate that it is too late for the Council to take enforcement action against the development alleged in the notice; that being the material change of use of land. However, the appellant's case is that the Council have been aware of the concrete block skirt around the base of the caravan since 2009 and that it has been in place in excess of four years. The concrete block skirt is only referred to "in association with" the material change of use rather than as separate operational development. Accordingly an appeal under ground (d) could only succeed if the material change of use of the land was immune from enforcement action because it was too late to take action against the use. Whether the requirement to remove the skirt is excessive having regard to the time it has been in place would be more appropriately considered under ground (f). The appeal on ground (d) fails.

Ground (a) – that planning permission should be granted

8. The main issues are:

- (a) the effect of the development on the character and appearance of the area; and
- (b) whether the appeal site is remote from facilities, services and employment; and
- (c) whether there is a need for residential accommodation on the site.

Character and appearance of the area

9. A certificate of lawful use was issued in May 2007 for the use of the caravan for purposes that are incidental to the keeping of horses for the private enjoyment of the owner, which include the storage of feed, tack, and horse related equipment or as a temporary shelter used during rest breaks or periods of bad weather. It follows that the primary use of the land at that time was for the keeping of horses. As the stationing of a caravan was for purposes ancillary to that use the certificate establishes that no material change of use of the land had occurred.
10. As the appellant points out the caravan can therefore remain and there is no requirement for it to be removed in order to remedy the breach of planning control. It is with this in mind that the impact of the residential use on the character and appearance of the countryside should be assessed. Paragraph 17 of the National Planning Policy Framework (NPPF) recognises the intrinsic character and beauty of the countryside. This is further reflected in CS policies DC1, DC3 and R1.
11. I agree with the Council that a residential use inevitably involves the introduction of additional residential paraphernalia such as garden furniture, washing lines etc. Indeed the raised area of hardstanding is an example of a feature constructed to improve the living conditions on the site and which may not have otherwise been constructed.
12. The current location of the caravan is fairly well contained within the site and at the time of my site visit was well screened from the road. Nevertheless, the

domestic trappings associated with a permanent residential use could have a negative sub-urbanising effect on the countryside and the wider setting of the Peak District National Park, the boundary of which is in close proximity to the site. The visual harm would not be great. However, on balance, I consider the development would detract from the intrinsic character and appearance of the area and consequently would conflict with relevant development plan policies.

Proximity to services

13. The nearest village to the appeal site is Onecote some 1.7 miles away which has very limited services available such as a public house, church and post box. For most facilities and services it is necessary to travel to the town of Leek that is some 10 minutes away travelling by car. The nearest bus route on the A523 is some 1.1 miles away from the site. The road network between the appeal site and Leek does not lend itself well to cycling or walking due to the narrow, winding and unlit nature of the rural roads and absence of pavements. It is considered that the appeal site is not reasonably located to access services and facilities such that any residential occupants are likely to be reliant on the use of the private car. I find conflict with Council's Core Strategy Policies SS1 and SS6c in this respect.

Need for residential accommodation

14. Policy SS6c of the Core Strategy resists dwellings in the countryside unless they comply with Policy R2 'Rural Housing' which allows agricultural / rural enterprise workers dwellings where the need for such accommodation has been satisfactorily demonstrated and that the need cannot be met elsewhere. Paragraph 55 of the NPPF states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. I regard the site to be isolated.
15. The appellant argues that it is essential for someone to live on site to provide the constant, specialist care necessary and for security reasons. Whilst other volunteers assist with the keeping of the horses during the day, the appellant alone is responsible for their care overnight and on weekends. She claims that it is essential for her to live on site to act quickly in the event that one or more horses are taken ill. Various examples are given of the types of ailments that may arise.
16. Planning permission has been secured for 12 stables. The appellant explains that there are currently 18 stables, some of which were a single stable that has been subdivided to provide two or three stables. The appellant explains that a countryside location is the only realistic place where rescue horses can be kept. Of the 19 horses currently kept by the appellant, the majority are over 15 years of age and described as 'old' in the appellant's Grounds of Appeal statement. Eight are over 20 years of age. Four have chronic illnesses that require special attention although no details of what those specific illnesses are or the attention that is required are detailed in the evidence.
17. 'Old age' can apply to many horses kept at grazing and yards where there is no residential presence. Similarly there is no evidence to demonstrate that the example of muscle wastage, colic episodes, abscesses, tumours and horses getting stuck in stables and the like are any more prevalent in rescue horses and ponies than others such that specialist care is required. I recognise that

horses and ponies that have been neglected may be suffering from malnutrition but the evidence does not demonstrate that addressing this requires someone to live on site. It is accepted that poor teeth may also be a more common consequence of neglect. However there is no veterinary evidence to show that this cannot be rectified in some cases, or that incidents of choke are so frequent that a night time presence is essential and specialist overnight care is required. The precise nature and frequency of any illnesses that have required immediate supervision at night is not supported by any veterinary documentation as might be expected for such emergencies. It is accepted, as endorsed by the appellant's vet, that there are advantages of living on site not least because the horses can be checked / observed with greater frequency thereby allowing problems to be detected quickly. However this does not demonstrate an essential need for someone to live on site and according to the weekly work rota, only two additional checks are made by the appellant on an evening at around 8 pm and 10-11pm. The volunteers are also present until 6.30-8pm on weeknights.

18. Furthermore I note that the amount of grazing is limited at the appeal site to accommodate 19 horses and that the appellant has the use of a further 22 acres elsewhere. Accordingly, during those times, the horses grazing elsewhere would not benefit from any residential presence being permitted on the appeal site.
19. As recognised by the main parties, security would not justify the need for someone to live on site. Various security measures can be put in place to make premises more secure. This is a consideration I give little weight.
20. The appellant refers to other decisions but no further details are provided with the grounds of appeal or subsequent statement. It is not therefore clear what evidence was included or how the sites and material considerations compare.
21. To conclude on this issue, notwithstanding the labour requirements of the site, the appellant has not satisfactorily demonstrated an essential need for someone to live permanently on site. I therefore find conflict with both Policy SS6c of the Core Strategy and Policy R2 'Rural Housing' and the NPPF in this regard.

Other matters

22. In accordance with paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The appellant claims that the Council cannot demonstrate a five year housing land supply and so paragraph 14 of the NPPF is engaged. This requires that where relevant policies in the development plan are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
23. As stated previously, I find conflict with paragraph 55 of the NPPF in that the site is isolated. The support to the local rural economy through the need to purchase horse feed, hay and bedding would continue irrespective of whether anyone was living on site. There are some social benefits arising due to the provision of accommodation for rescued horses and ponies needing a home. The appellant is employed elsewhere and so the caravan would not negate the

need to travel to and from her place of employment in the way a live / work unit might, notwithstanding that some vehicle trips to and from Leek would be reduced. Overall the environmental harm would outweigh the benefits.

24. I note that there is some support for the development locally. Nevertheless to conclude overall the adverse impacts of granting planning permission, even on a temporary basis, where no essential need has been demonstrated, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. Accordingly, I consider the appeal on ground (a) should not succeed.

Ground (f)

25. The Council concedes that it would not object to the requirements of the notice being varied to allow the concrete skirt to remain. It appears to me from the written evidence before me that the concrete skirt was, on the balance of probability, in place before the occupation of the caravan for residential purposes and thus before the breach of planning control. It did not facilitate the material change of use of the land. Its removal would exceed what is necessary to restore the land to its condition prior to the breach of planning control alleged in the notice. The appeal on ground (f) succeeds to this extent and I shall vary the requirements of the notice accordingly.
26. There is no substantive evidence to demonstrate that the concrete hardstanding is not integral to and part and parcel of the residential use of the site. It would serve no useful purpose in association with a 'rest / mess room' associated with the keeping of horses. The requirements of the notice are not excessive in this regard.

Overall Conclusions

27. For the reasons given above I conclude that the requirements are excessive, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Claire Sherratt

INSPECTOR