
Appeal Decisions

Site visit made on 19 September 2016

by K R Saward Solicitor

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

Decision date: 12 October 2016

Pine Tree Stud, Horse Hill, Goadby, Leicestershire LE7 9EE

Appeal A: APP/F2415/C/16/3146327

Appeal B: APP/F2415/C/16/3146689

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Philip Burton (Appeal A) and Mrs Georgina Burton (Appeal B) against an enforcement notice issued by Harborough District Council.
- The enforcement notice was issued on 11 February 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for the stationing of a caravan and a mobile home for separate residential use in the approximate locations hatched black and marked on the plan attached to the notice.
- The requirements of the notice are:-
 - i. Cease the use of the caravan and mobile home as independent residential units.
 - ii. Remove all kitchen facilities and equipment from the caravan.
 - iii. Remove the mobile home in its entirety from the land.
 - iv. Remove the raised decking area and all other items associated with the residential use of the caravan and mobile home (such as the rotary dryer [*sic*], trampoline and garden furniture) from the agricultural land.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) & (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision

Application for costs

1. An application for costs was made by Mr and Mrs Burton against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The minor typographical error in paragraph 5(iv) of the notice which refers to a rotary 'dyer' instead of 'dryer' can be corrected without any injustice.
 3. In its Appeal Statement the Council has made comments under the heading of 'Ground (a) – That the breach of control alleged in the enforcement notice has
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not occurred as a matter of fact'. The ground (a) appeal (in Appeal A) is that planning permission should be granted for what is in the notice. No appeal has been brought on ground (b) which applies where an appellant argues that the breach of control alleged in the notice has not occurred. Although some arguments concerning whether or not there is a separate residential use may fall within ground (b), for ease of discussion I shall deal with them all under ground (c) as raised in both appeals.

4. Whilst no ground (f) appeal has been brought, the appellants have argued that the measures in the notice are excessive by requiring removal of the kitchen from the caravan and the raised decking area. The Council's submissions respond to these grounds and no injustice therefore arises from my consideration of the arguments raised as though a ground (f) appeal had been made.
5. It became apparent at my site visit that the plan attached to the enforcement notice does not correctly identify the caravan and mobile home which is the subject of the notice. The approximate position is correct, but the mobile home is not appreciably smaller than the caravan, as indicated. Moreover, as the mobile home is sited perpendicular to the caravan, the units are not in alignment. As a result, the relationship to the bungalow does not appear to be represented accurately. The appellants clearly understood which units were being attacked by the notice and the validity of the notice is not affected. The block plan that accompanied the retrospective 2015 planning application reference 15/0093/FUL identifies the units in a position which appears consistent with my observations on site, albeit the boundaries depicted may not be wholly accurate. I propose to substitute a marked up copy of this plan for that annexed to the notice for greater clarity. No injustice arises in consequence.
6. By the time of my site visit the mobile home was unoccupied and empty of contents. The appellants had stated that they are seeking to sell the unit and remove it from the site. They have stated since that it is the wish of their daughter to return to the mobile home, but she has not done so due to the uncertainty of these enforcement proceedings. In providing this clarification the appellants requested, after the close of submissions, that a longer period than 1 month be afforded to remove the mobile home should the notice be upheld. No ground (g) appeal was brought, but the notice gives 3 months in any event which strikes me as a reasonable compliance period.
7. The appellants have drawn my attention to various appeal decisions¹. I have taken note of these insofar as they shed light on the matters before me, but each case is unique. The nature of those appeals also differs. None of the other cases referred to have bound me in considering the case the subject of these appeals, which have been determined on their own merits.

Appeals A and B

The appeals on ground (c)

8. An appeal on this ground is that the matters alleged in the notice do not

¹ APP/R3325/X/11/2166751 dated 11 April 2012; APP/P2365/X/09/2109940 dated 6 November 2009; APP/A5270/A/13/2198350 dated 15 October 2013; APP/B3428/A/12/2188171 dated 30 April 2013; APP/T2215/X/11/2155415 dated 31 October 2011.

constitute a breach of planning control.

9. Pine Tree Stud is jointly owned by the appellants and Mrs Burton's parents who live in the bungalow. There are two mobile homes on the appeal site. Both are large park home style caravans. In the notice, the Council refers to one as a caravan and the other a mobile home. For consistency, I shall do likewise.
10. The caravan is occupied by the appellants and, until recently, the mobile home was occupied by their daughter and her baby. The caravan was positioned on the land following the issue of a Certificate of Lawfulness of Proposed Use or Development (LDC) on 20 May 2009. The reasons for issuing the Certificate state that the proposal (for the siting of a caravan) was not considered to be development 'as the use of the caravan is ancillary to the enjoyment of Pine Tree Stud as a dwelling house'.
11. A retrospective planning application for 'retention of mobile units providing ancillary accommodation' was submitted in June 2015 after commencement of the enforcement investigation triggered by the introduction of the mobile home. The appellants say that the application was made at the instigation of the Council rather than representing any acknowledgement that planning permission was required. Planning permission was refused in September 2015 and no appeal was lodged against that decision. The enforcement notice was subsequently issued.
12. There are two main points of contention between the parties. Firstly, whether the two units are within the residential curtilage of the dwellinghouse. Secondly, whether the use of the units is ancillary to the use of the dwellinghouse.
13. However, whether or not the units in residential use are within the curtilage of the bungalow does not particularly matter provided they are within the same planning unit. My approach in this regard is consistent with appeal Ref: *APP/R3325/X/11/2166751* produced by the appellants. Whereas, the 'curtilage' will usually be confined to a small area about the building, the planning unit may be much wider.
14. The term 'ancillary' or 'incidental' refers to an activity not normally expected to be found as an integral part of the primary use. Therefore, the use is not 'ancillary' where the use is as primary living accommodation. If that use is part and parcel of the residential use within the same planning unit, then there is not a material change of use. Much in the same way that a 'granny' annexe or a garage converted to a bedroom may be regarded as part and parcel of a dwellinghouse use without amounting to a change of use.
15. The Council has referred to this general principle in quoting from the case of *Pecche D'Or Investments and Rambridge* as authority that a purpose integral to an ordinary residential use of a dwellinghouse is not incidental. In doing so, the Council has sought to prove that the use of each unit is not incidental to the bungalow. Given the residential occupation of both units, it is clear that neither can be properly defined as 'incidental' to the use of the dwelling. Similarly, Class E, Part 1, Schedule 2 of the Town and Country Planning (General permitted Development)(England) Order 2015 which permits the provision of a building within the curtilage of a dwellinghouse for a purpose incidental to its enjoyment, is not relevant to this case.

16. As set out above, the key issue is whether there is a material change of use. That is a question of fact and degree in each case. Here, it depends on whether in the first instance the units were stationed within the same planning unit as the bungalow. If so, the question turns on whether the units provide additional accommodation in connection with the residential use which does not amount to use as a separate dwelling. The starting point is an assessment of the relevant planning unit.
17. It is consistent with case law including the judgment in *Burdle*² that the planning unit should be determined with regard to the unit of occupation, and the concept of physical and functional separation. Three broad categories of distinction were identified in *Burdle*. Firstly, a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary. Secondly, a single planning unit where the whole unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another, or, in the case of a composite use, where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land. Thirdly, the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes, in which case each area is used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.
18. In this instance, there is a single access point with a driveway that goes past the bungalow on one side and the units on the other leading to a large stable block directly ahead. Beside the stable block is a ménage and there are paddocks behind the land where the units are stationed. There are also fields forming part of the same land holding.
19. The bungalow is a modest detached dwelling which has been extended at the rear. It has an enclosed rear garden and hedging to one side and front boundary. The front garden is open to the other side where it adjoins the driveway and is laid to lawn with a hard surfaced strip for parking. The Council identifies the whole of this area as the residential curtilage and draws support for this stance from the same area having been shown as the red line site in the planning application to extend the bungalow. The Council considers the lawful use of all the surrounding land to be mixed agricultural/equestrian use.
20. The units are positioned on hard-standing immediately adjacent to the driveway. Whilst physically separated from the bungalow by the driveway, both units are close to the dwelling. The caravan is orientated to face towards the front of the bungalow and the mobile home is positioned side on. Notably, the appellants state that the mobile home replaced a garage for the bungalow which was demolished in 2014. A copy aerial photograph from 2011 shows a small outbuilding with pitched roof in that approximate location. There is no evidence to contradict the appellants' evidence regarding this former structure and its use which is clearly indicative of the land having formed part of the domestic use. Other copy photographs show that historically there was a row of conifer trees where the caravan is now located. This is verified by the contractor who removed the trees to facilitate placement of the caravan. The trees would have provided a physical barrier between the area in residential

² *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207.

occupation and the paddocks behind.

21. In *Burdle*, Bridge J suggested that it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. In the absence of any substantive evidence to suggest otherwise, I am inclined to the view that there is a mixed use of a single planning unit comprising residential, equestrian and agricultural uses. As such, both the caravan and the mobile home were stationed on land within the same planning unit as the bungalow. That being so, they are capable of being used as additional primary accommodation for the bungalow without giving rise to a change of use. The issue turns to whether that is in fact what has happened.
22. The Council asserts that a breach of planning control has occurred because two new separate residential units have been created. The main thrust of its argument is that each unit is capable of independent and self-contained living. Both are designed to facilitate day-to-day living without use of any other building including the main dwellinghouse.
23. The key issue is not what facilities are available, but how the units have actually been used. Indeed, it is not uncommon for a caravan to have a fitted kitchen. I note the Council's reference to approved LDC's generally being associated with the lack of a functioning kitchen. Nonetheless, it is well established by case law that even if accommodation provides facilities for independent day-to-day living it does not automatically become a separate residential unit from the main dwelling. On the other hand, the LDC was not a grant of permission as stated by the appellants.
24. Whilst the Council may have concerns over whether it should have been issued, the fact remains that the LDC is in force. The lawfulness of the use set out in the LDC is conclusively presumed by virtue of section 192(4) of the 1990 Act, but that is of limited value to the appellants because all it certifies as lawful is 'the siting of a caravan'. It does not specify for what purpose. The reason for issuing the certificate was that the proposed siting of a caravan was not considered to result in a material change of use so as to amount to development as the use would be ancillary to the enjoyment of Pine Tree Stud as a dwelling house. Upon issuing the LDC, the Council was clearly satisfied that the proposed use as described was intended to function as part of the main dwelling. However, it does not certify as lawful the residential use.
25. It is not enough for the appellants to simply maintain that the use commenced and continued on that basis. They have the burden of proof. It is for the appellants to demonstrate that the use of land remains in single family occupation and has continued to function as a single household.
26. There is scant detail on how the mobile home was occupied as an extension of the residential occupation of the bungalow and what dependence, if any, there was on the dwelling. Whilst that use has since ceased, it subsisted when the notice was issued and there is intention for it to be resumed.
27. In terms of the caravan, reference is made to the LDC application which was made by Mr Marshall, Mrs Burton's father. In the supporting information he described how the caravan would be occupied by Mrs Burton's family as an extension of the accommodation at the main house. It was explained that Mr

- Burton suffers from a long term chronic illness necessitating daily care and nursing. By having the family close at hand it was anticipated that assistance could be provided with Mr Burton's care.
28. It is maintained that occupation of the caravan has always been on that basis and continues with ongoing dependence upon Mrs Burton's parents to provide daily healthcare needs for Mr Burton. Utilities continue to be shared with the main dwelling and there is a single entry on the electoral roll and council tax. The same family occupy both the caravan and bungalow under the same ownership. These factors provide some indication of a single use, but do not go far enough to show that a separate residential use has not occurred.
29. The appellants additionally refer to there being a single postal address although the Council has submitted that the caravan is now called "The Lodge", a point not contested by the appellants.
30. The appellants' evidence needs to be sufficiently clear and precise with enough information to demonstrate how the use forms part and parcel of the use of the main dwelling. Without any other details of how the occupants are actually using facilities in common with the family at the bungalow, it is unclear whether they do function as one household. For instance, no details have been supplied on whether, say, meals are taken together at any regularity. The caravan is equipped with both a washing machine and tumble dryer indicating that the appellants' washing is not undertaken at the bungalow. Nor is there any indication as to the degree of care provided to Mr Burton.
31. To support their case the appellants have quoted Appeal Ref: *APP/B3438/A/12/2188171* as an example of development allowed providing living accommodation for a dependant relative. That was a case decided on the planning merits, and in that case there were broad corroborated details of the nature of the condition, basic kitchen facilities only, no utility provision nor separate outdoor space. The circumstances thus differ considerably.
32. Since the issue of the LDC there are other factors which appear to have changed. A verandah has been built at the rear of the caravan on which I noted two barbeques along with table and chairs. This comprises an expansive area of decking which appears conducive to use as a separate self-contained unit. The Council also refers to the addition of private amenity space, being the grassed area immediately behind the caravan and mobile home. This is enclosed with post and wire fencing and there was a pony on the land when I visited. It appears probable that this area has been used as garden land judging by photographs, its layout, condition, position and enclosure. References in the notice to a trampoline and dryer can only have been on this land and indeed the dryer is shown in one of the Council's photographs. Steps leading down to the grass from the caravan verandah would appear unnecessary if the land is utilised solely as paddock.
33. These areas of outside space are separate from the dwelling and are indicative of how the units have been used. Whilst in isolation it does not automatically mean that the uses are separate, it does appear to be inconsistent with the appellants' stated position. Combined with the lack of sufficient information to demonstrate that each of the units is not in separate residential use, the appellant has failed to discharge the burden of proof.
34. This leads me to conclude that there is now physical and functional separation

of both the caravan and the mobile home from the main dwelling. Therefore, on the evidence before me there is as a matter of fact a separate residential use in each case for which planning permission is required.

35. The appeals on ground (c) fail.

Appeal A only

The appeal on ground (a) and the deemed planning application

Main Issue

36. The main issue is the suitability of the site for separate residential use having regard to its countryside location.

Reasons

37. The deemed planning application derives its terms directly from the words of the allegation; that is the matters stated in the notice as constituting a breach of planning control (section 177(5)). Therefore, the application in this case is for the change of use of the land for the stationing of a caravan and mobile home for separate residential use.
38. The appeal site lies in a remote rural location not far from the village of Goadby. It is in the countryside where planning policy seeks to restrict development. In particular policy CS1 of the Core Strategy³ seeks to maintain the District's unique rural character whilst CS17 provides that development in the countryside will be strictly controlled. This reflects paragraph 55 of the National Planning Policy Framework which aims to avoid new isolated homes in the countryside unless there are special circumstances. The development in this case does not fall within any of the listed examples of special circumstances.
39. In its reasons for issuing the notice, the Council also identifies policy CS11 which requires development to respect its context and respond to the wider local environment. The appeal site is accessed via a track between hedgerow off Horse Hill, a long and narrow lane that winds through the undulating countryside. Due to its isolation and extent of foliage screening the site, the caravan and mobile home cannot be seen from the wider area, but it does not automatically follow that no harm arises in consequence.
40. Thus, the use of the land for the siting of the caravan and mobile home is contrary to the development and the deemed planning application must be refused unless there are material circumstances that indicate otherwise.
41. The arguments advanced under ground (a) relate to the appellants' personal circumstances on which the Council has not commented. In relation to the mobile home, those circumstances concern assisting the appellants' daughter through the early stages of motherhood. Whilst having family in close proximity may be desirable, it does not advance a compelling planning reason and I give it little weight. Moreover, given the passage of time and that the daughter has since moved out, it reinforces that there is no justifiable planning reason for an ongoing residential use of the mobile home.
42. With regard to the caravan, the personal circumstances relate to care required

³ Harborough District Local Development Framework Core Strategy 2006-2028, 2011

by Mr Burton with which his parents-in-law assist. Whilst I sympathise with the appellants' situation, personal circumstances will seldom outweigh the more general planning considerations.

43. The appellants have referred me to appeal decisions *APP/A5270/A/13/2198350* and *APP/B3438/A/12/2188171* where planning permission was granted in each case subject to a condition that the buildings remained 'ancillary' to the main house. Such a condition would not be appropriate in this instance where the application is for a 'separate' residential use. I have also considered whether to impose a condition to grant a personal or time limited planning permission, but I have insufficient information to be satisfied that such approach would be warranted.
44. In any event, provided the mobile home is occupied as additional accommodation to the main dwelling within the same planning unit then the use would not amount to development requiring planning permission. Care could be provided for Mr Burton without the need for the caravan to be occupied as a separate residential unit of accommodation. This limits the weight that can be attributed to the healthcare need argument.
45. To sum up, this is not a suitable site for separate residential use given its countryside location which brings the use into conflict with policies CS1, CS11 and CS17 as aforesaid. Having carefully considered the matter, I am not satisfied that the development plan conflict is outweighed by the personal circumstances of this case.

Conclusion on ground (a) and the deemed planning application

46. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Appeals A and B
The appeals on ground (f)

47. The ground of appeal is that the steps required by the notice to be taken are excessive.
48. The notice requires removal of the mobile home, but only the kitchen and decking from the caravan. The notice appears to have been drafted in this way as deliberate under-enforcement so that the caravan could be used, but not as a separate unit of accommodation.
49. The appellants consider it excessive to require the removal of the kitchen from the caravan and removal of the decking.
50. By requiring the separate residential use to cease, the notice is clearly directed towards remedying the breach of planning control which has occurred (section 173(4)(a) of the 1990 Act). Most caravans will have some form of kitchen fitted as standard. It does not automatically follow that the use will be separate from the bungalow whilst a kitchen remains.
51. Removal of the kitchen in its entirety would leave the appellants without basic facilities which is unduly harsh particularly when one occupant has healthcare needs. I consider this step is excessive. Whilst I recognise the Council's concerns, the appellants can be left in no doubt that continued occupation of

the caravan means using it as additional accommodation to the bungalow only with the risk of prosecution if they use it as a separate unit of accommodation in breach of the notice.

52. In contrast to the kitchen, the decking forming the verandah is an addition that has been made. The appellants suggest the decking has a dual use; as a fire exit and protection of the caravan from the goats and horses that graze the land whilst also providing them with shelter in inclement weather. A fire exit could be provided without such a large verandah. Notwithstanding that I am unpersuaded this piece of land is in regular use as a paddock, it is a most unconventional way to provide protection from and shelter for animals which could be achieved by simpler alternative means. The primary purpose is clearly to afford an outside useable space for the occupants. It does facilitate a separate residential use regardless of the planning unit. That being so, I am satisfied that its removal is not excessive.

53. I shall vary the notice by deleting paragraph 5.ii. prior to upholding it. To this limited extent the ground (f) appeal succeeds.

Formal Decisions

Appeal A

54. It is directed that the enforcement notice be corrected by:-

- (a) replacement of the word "dye" with "dryer" in paragraph 5.iv. of the notice and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

and varied by:-

- (b) deletion of paragraph 5.ii. of the notice

55. Subject to these corrections and variation, 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.

Appeal B

56. It is directed that the enforcement notice be corrected by:-

- (a) replacement of the word "dye" with "dryer" in paragraph 5.iv. of the notice and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

and varied by:-

- (b) deletion of paragraph 5.ii. of the notice

57. Subject to these corrections and variation, the enforcement notice is upheld.

KR Seward

INSPECTOR



Plan

This is the plan referred to in my decision dated: 12 October 2016

by **KR Saward Solicitor**

Land at: Pine Tree Stud, Horse Hill, Goadby, Leicestershire LE7 9EE

References: APP/F2415/C/16/3146327 & 3146689

Scale: DO NOT SCALE



