
Appeal Decisions

Site visit made on 17 October 2016

by **K R Saward Solicitor**

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

Decision date: 27 October 2016

Land to the East of Red Lyons Lodge, Burnham Road, Latchingdon

Appeal A: APP/X1545/W/16/3154450

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs M Friend against the decision of Maldon District Council.
- The application Ref: FUL/MAL/15/00685, dated 30 October 2015, was refused by notice dated 19 January 2016.
- The development proposed is described as "caravan to be sited for duration of new build".

Summary of Decision: The appeal is dismissed.

Appeal B: APP/X1545/C/16/3154447

Appeal C: APP/X1545/C/16/3154448

- 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 M Friend (Appeal B) and Mrs J Friend (Appeal C) against an enforcement notice issued by Maldon District Council.
- The enforcement notice was issued on 13 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land for the stationing and habitation of a mobile home, the erection of a shed and formation of hardstanding.
- The requirements of the notice are:-
 - a. Discontinue the unauthorised use of the land for the stationing of a caravan for the purpose of human habitation and remove the caravan from the land
 - b. Remove the shed from the site
 - c. Remove the hardstandings from the site
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld with correction.

Preliminary Matters

1. Whilst no ground (a) appeal has been brought against the enforcement notice in Appeals B and C, a retrospective planning application was made by the appellants for the use of the land for the siting of the caravan which is the subject of the notice. Appeal A concerns the decision to refuse that application.
 2. In Appeals B and C the allegation within the enforcement notice relates to the habitation of a "mobile home" whereas requirement 5.a refers to the caravan.
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For consistency, both should use the same terminology and I will correct the notice accordingly. No injustice arises from my doing so.

3. Even though Mr and Mrs Friend completed one enforcement notice appeal form, they are treated as each pursuing their own appeal which is why separate reference numbers have been assigned in Appeals B and C.

Appeal A – The section 78 appeal

Main Issues

4. The main issues are the effect on the character and appearance of the surrounding area and the suitability of the site for the stationing of a caravan having regard to its countryside location.

Reasons

Character and appearance

5. Burnham Road runs through part of the village of Latchingdon and continues out into open countryside. The appeal site forms part of a grassed field of broadly rectangular shape located outside the settlement boundary as defined in the Maldon District Replacement Local Plan (RLP), 2005. Originally, it was part of the landholding for 'Red Lyons Lodge', a bungalow to the west of the site which has a small business park on land to the rear. A larger area to the east of the appeal site is land identified as also being within the appellants' ownership. Next to the eastern boundary of that field is another dwelling known as 'Red Lyons Farm Bungalow'.
6. Outline planning permission was granted on 17 January 2013 pursuant to application reference OUT/MAL/12/00912 for the erection of a bungalow on the appeal site. Reserved matters were subsequently approved on 1 March 2016, but pre-commencement conditions have not yet been discharged. As such, there is no planning permission that can currently be implemented.
7. The process has apparently taken longer than the appellants expected. Following the sale of their property, they moved into the static caravan which is positioned on hardstanding towards the rear of the appeal site. Hardcore has been laid to create an access, track and parking areas. The parties disagree on when residential occupation of the caravan began, but the documentation indicates it was no later than September 2015. The appellants seek planning permission to allow them to occupy the caravan until their bungalow has been built.
8. This is not an isolated site, but buildings do become increasingly sporadic along this stretch of Burnham Road. The character is distinctly rural with open fields stretching into the distance opposite and behind the site. Notwithstanding the presence of development to either side, the gap from the appeal site and adjoining land is considerable. Without any boundary treatments enclosing the site either to the front or within, there is a large open expanse of land creating a sense of spaciousness contributing to the rural quality of the area.
9. Against this backdrop, the introduction of a relatively large caravan within the open space is a highly obtrusive feature. Whilst there is planning permission for a bungalow within the same space, the caravan is a temporary structure of

corresponding appearance and little design merit. Significant harm arises to the site and its surroundings.

10. The appellants believe the Council has acted unreasonably given their personal circumstances and that only the submission and approval of external materials and details for boundary treatments remain unresolved before the permission is implementable. Furthermore, the appellants consider that the occupation of the caravan will be permitted development once development commences by virtue of Schedule 2, Part 5 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). In its response, the Council refers to Part 4 of the GPDO, but this relates to temporary buildings and structures rather than uses.
11. It is Class A of Part 5 of the GPDO that provides for the use of land, other than a building, as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960. Paragraph 9 thereof allows for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out. The reference to adjoining land means it would not matter that the caravan slightly straddles the boundary for the approved bungalow site. The Council doubts that Part 5 of the GPDO will apply as paragraph 9 requires the use of the accommodation to be for a person or persons employed in connection with the operations. The appellants maintain that the bungalow will be a self-build and I have no reason to consider otherwise.
12. However, as things stand, development of the bungalow has not commenced and Part 5, Class A does not presently provide a fallback position. In any event, there is no certainty that the pre-commencement conditions will be discharged or development begun very soon, as suggested.
13. Furthermore, the application is for the caravan to be sited "for duration of new build". The caravan is already in use even though the new build is yet to start. The likelihood of development starting in the very near future is given as justification for seeking this permission. It is by no means clear though when that might be. Aside from the uncertainty over whether and when development might commence, the build out period is unknown and the permission could be implemented without the bungalow ever being completed.
14. Therefore, the planning permission sought could be for an indefinite period unless it is time limited by condition. The appellants have not identified the duration anticipated for the build in their submissions and it is not for me to speculate. If reliance can be placed on Part 5 in future, there could be a caravan in situ for a prolonged period, but it could only be whilst building operations are carried on. As soon as those circumstances cease to exist the use has to discontinue and the caravan removed from the site.
15. That is not the present scenario with any sign of development starting. The prospect of it occurring does not mitigate the harm arising now. Harm is being caused by the caravan which could endure far in excess of any permitted development rights under Part 5. A time limited permission has not been shown to be justified given the uncertainty described above and the extent of adverse visual impact arising from the presence of the caravan on the site.
16. There is significant detrimental effect to the character and appearance of the

site and its surroundings. This is contrary to RLP policies BE1 and CC6 insofar as they seek to protect and enhance the countryside and the similar aims in paragraph 17 of the Framework to recognise the intrinsic character and beauty of the countryside.

Suitability of the site

17. The caravan is positioned in the countryside where planning policy seeks to restrict development. In particular, RLP policy H1 restricts new housing outside development boundaries unless it complies with other policies in the Local Plan. Outside development boundaries, the countryside will be protected for its own sake pursuant to RLP policy S2. Although the RLP pre-dates the Framework, these policies are broadly consistent therewith when taken as a whole.
18. Given the extant planning permission for the erection of a bungalow following the grant of outline permission and the approval of reserved matters, the principle of residential use of the land has been established. This is a very significant material consideration which in the circumstances outweighs the policy conflict with RLP H1 and S2.

Planning balance

19. As set out above, there can be no justified objection to the principle of residential use. Once development of the bungalow commences on the appeal site, a caravan may be positioned on the land if permitted development rights can be exercised. Any such caravan could be in situ for a prolonged period during the building operations. That situation might arise in the near future. I recognise and sympathise with the appellants' dilemma of having sold a property in the expectation of being able to implement the construction of their new home.
20. Having carefully considered the position, none of these factors either individually or collectively outweigh the significant harm arising from the siting of a caravan in this open setting in the countryside.

Conclusion on Appeal A

21. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Appeals B and C - ground (f)

22. The ground of appeal is that the steps required by the notice to be taken are excessive. These involve removal of the caravan, shed and hardstandings.
23. The appellants consider the steps to be excessive because the hardstanding and caravan will only be replaced under permitted development rights once development of their bungalow begins. Even if the appellants can at that time satisfy the requirements of Schedule 2, Part 5, Class A, the fact remains that the use and development are currently unauthorised. They can only stay on the site with planning permission. It cannot be granted pursuant to a ground (f) appeal. There is no ground (a) appeal and deemed planning application.
24. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)),

or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

25. The Council has not specifically identified which of those two purposes it seeks to achieve, but it would appear to be both. Its reasons include harm to the character and appearance of the area indicating that it seeks to remedy this injury to amenity. The steps to be taken by the notice require removal of the unauthorised hardstandings and cessation of the residential use. This is consistent with the purpose, whether in whole or part, of remedying the breach of planning control. This can only be achieved by the removal of the hardstandings and caravan. No lesser steps would satisfy the requirements of the notice. Therefore, they do not exceed what is necessary.

26. The appeals on ground (f) fail.

Appeals B and C - ground (g)

27. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The appellants seek 12 months rather than the 6 months given in the notice to secure the discharge of the conditions and for work to be undertaken on the proposed dwelling.

28. The effect of the appeals is to stop the clock. The notice only takes effect on the date of this appeal decision. In addition to the 6 months provided, the appellants will already have had several months since the service of the copy notice in which to progress the discharge of pre-commencement conditions. The appellants suggest that this should be imminent and are adamant that they will then be able to fulfil Part 5 of the GPDO.

29. In the circumstances, 6 months is ample opportunity to secure the discharge of the conditions and to implement the development. By the same token, there is harm to the countryside. Six months strikes an appropriate balance between the competing interests when weighing the interests of the private individual against the public interest such that the response is a proportionate one and there would be no violation of the occupiers' human rights.

30. The appeals on ground (g) fail.

Formal Decisions

Appeal A

31. The appeal is dismissed.

Appeals B and C

32. It is directed that the notice be corrected by deleting the words "mobile home" from paragraph 3. and substituting the word "caravan". Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

KR Seward

INSPECTOR