
Appeal Decisions

Hearing held on 20 September 2016

Site visit made on 20 September 2016

by Nigel Burrows BA MRTPI

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

Decision date: 4 November 2016

Appeal A: APP/J2210/C/16/3147709

'The Quiet View', land west of 146 The Street, Kingston, Canterbury, Kent, CT4 6JQ

- 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 Mr John Hopthrow against an enforcement notice issued by Canterbury City Council.
- The enforcement notice, ref: ENF/15/00378, was issued on 8 March 2016.
- The breach of planning control as alleged in the notice is 'the change of use of land for the stationing of a residential caravan, and facilitating development comprising steps and a porch.'
- The requirements of the notice are:-
 - i. Permanently cease residential use on the land.
 - ii. Permanently remove the caravan marked approximately with an 'x' on the attached plan from the site.
 - iii. Remove the steps and porch over the entrance to the caravan from the site.
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction

Appeal B: APP/J2210/W/16/3149832

Land adjacent to and associated with 'The Quiet View', adjacent to 146 The Street, Kingston, Canterbury, Kent, CT4 6JQ

- 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 J Hopthrow and Mrs (Revd) E Hopthrow against the decision of Canterbury City Council.
- The application Ref: CA/15/01765/FUL, dated 11 August 2015, was refused by notice dated 12 November 2015.
- The development proposed is described as 'Use of land adjacent to and associated with the adjacent Quiet View for the temporary stationing of a temporary residential structure (log cabin) which meets the statutory definition of a caravan's size and portability for the personal occupation of the applicants'.

Summary of Decision: The appeal is dismissed

Procedural Matters

1. At the hearing the main parties agreed that a more accurate description of the breach of planning control alleged in the enforcement notice (Appeal A) would be *'the change of use of land for the stationing of a caravan for residential occupation and facilitating*
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development comprising steps and a porch. I intend to correct the notice accordingly. I am satisfied this correction would not cause any injustice to either of the main parties.

2. Turning to Appeal B, it also transpired that the proposal could be more accurately described as *'Use of land adjacent to and associated with the adjacent Quiet View for the stationing of a residential structure (a log cabin which meets the statutory definition of a caravan's size and portability) for the lifetime of the applicants and for their personal occupation'*. I have therefore considered the proposal on this basis.
3. Part of the appellants' case is predicated upon the lawfulness of the use of the land for what is described as a *'sui generis community use'*, including associated items placed on the land and the construction of other structures. An application for a lawful development certificate (LDC) was evidently lodged with the Council during March 2016. However, at the hearing the Council's representative confirmed this application had not been determined and, moreover, that no timetable could be given for its determination.

Background

4. 'The Quiet View' is a plot of land extending to about 0.59 ha situated on the southwest side of 146 The Street, on the periphery of the village of Kingston near Canterbury. According to the Council, the adjacent dwellinghouse marks the outer edge of the built-up extent of the village within this part of The Street. There is no dispute that the land is located within the Kent Downs Area of Outstanding Natural Beauty (AONB). According to the Council, the land also lies within a Special Landscape Area (SLA).

5. The submissions made on the appellants' behalf state:

*"The Quiet View is a garden for peace, inspiration and silence where people can pray, relax, meditate and rest. The ethos is rooted in Christianity, but people of all faiths or no faith are welcomed. It was begun in the mid-1970s by the appellants, Lizzie Hopthrow and her husband John and has flourished since that time. It is an area of land next to their former home at 146 The Street. Their son and daughter-in-law bought 146 recently and have moved into to be near the appellants."*¹

6. The planning history of the land is well known to the main parties and does not need to be recited in any great detail here. Suffice to say that the static caravan attacked by the enforcement notice (Appeal A) is currently occupied by the appellants. As noted above, the appellants previously occupied the adjacent dwelling. The latter property appears to have been sold to the appellants' son and daughter-in-law in late 2014. The appellants propose to replace the static caravan with the log cabin subject of Appeal B.

Appeal A: ground (a) and Appeal B

7. Taking into account all that I have seen and read, I consider there are two main issues in these appeals. The first is whether the provision of residential accommodation upon the site would be an appropriate form of development in this location, having regard to the relevant development plan policies concerning this type of development and other material considerations. The second is the effect of the development on the character and appearance of the site and the visual qualities of the landscape within the AONB.

Planning Policy

8. The development plan for the area includes the 'saved' policies of the Canterbury District Local Plan.² Policy BE1 requires high quality proposals that respond to the objectives of sustainable development; various criteria should be considered including the need for the development and also landscape considerations.³ Policy H1 deals with residential development on sites allocated for housing/mixed use, or other sites on

¹ Paragraph 2.9 of the hearing statement for the appellants

² Canterbury District Local Plan: First Review, adopted in 2006

³ Criteria (a) and (c) respectively of policy BE1

previously developed land within urban areas. Policy H9 indicates that residential development (in excess of minor development) on previously developed sites within villages will only be permitted where certain criteria are met. Paragraph 2.58 of the accompanying text explains the Council recognises that in certain circumstances housing should be provided in the countryside to meet an identified housing need (based on an up-to-date housing needs survey). People with family or employment connections in a village should not be forced to move away to find housing. Local Plan policy R6 deals with SLAs and indicates that priority will be given to the conservation and enhancement of the natural beauty of the landscape over other planning considerations whilst having regard to the economic and social well-being of the area.

9. The parties have also cited emerging policies in the 2014 Publication Draft of the Canterbury District Local Plan. However, it is by no means certain that all of these policies will progress to adoption in their current form. Therefore, they can only be given limited weight. Nonetheless, the parties agreed that significant weight could be given to emerging policies LB1 and LB2. The former policy gives high priority to the conservation and enhancement of natural beauty in the AONB; proposals which conflict with this objective or which endanger tranquillity will not be permitted. The latter policy seeks to protect defined Areas of High Landscape Value, including the North Downs.

Issue 1: The appropriateness of the development

10. In effect, there appear to be two limbs to the appellants' argument that planning permission should be granted for residential accommodation upon the land. The first is predicated on the need for someone to be on hand at all times in connection with the use of 'The Quiet View'. The second is predicated on the personal circumstances of the appellants and, in particular, the health problems of Mrs Hopthrow, a retired Anglican vicar. I therefore intend to address each limb of the appellants' argument in turn.
11. An explanation of the need for a residential presence on the land is given in a personal statement at Appendix 5 of the appellants' submissions. The appellants' responsibilities to visitors are described, including their physical comfort and security. Mrs Hopthrow needs to be on hand to offer counselling and support. Mr Hopthrow evidently carries out maintenance duties such as dealing with the toilet, water and electrical supply, maintaining the Yurt and developing the garden facilities. The typical daily duties include the preparation of the facilities at the start of the day, meeting and greeting visitors and clearing up at the end of the day. The submissions state: "*Being a Retreat Centre/Community Garden Warden is a vocation and requires a living presence on site.*"
12. However, it appears to me that the majority of the tasks to be undertaken could be carried out during the normal working day. Even allowing for the 'meet and greet' element of the use, it would not require a 24-hour/365-day presence on the land. The hearing was told that on occasions some visitors might arrive unexpectedly or 'out of hours'. Nevertheless, alternative arrangements could be made for these individuals, for example, by providing 'out of hours' contact details at the entrance to the garden.
13. The appellants' submissions indicate that security is a particular concern. Reference is made to three incidents of theft from 'The Quiet View' between 1987 and 2005 and two incidents of theft from 146 The Street between 1994 and 2003. However, whilst the concern to maintain security might contribute to the need for a dwelling, it will not by itself be sufficient to justify one. In any event, it should be possible to adequately secure the land from intruders by arranging additional security measures. These measures need not be intrusive, or at odds with the stated purpose of 'The Quiet View'.
14. Another troubling aspect of the appellants' argument for a residential presence on the land is that it is predicated, in part, on a land use for which no planning permission or LDC exists. The appellants' professional advisor appears confident that an LDC will be granted.⁴ However, as noted in paragraph 3 above, no LDC has been issued at the present time.

⁴ Partly due to the comments made by a Planning Officer during an exchange of correspondence with the Council

This undermines the case for any living accommodation on the site. In any event, even if an LDC were to be issued, on the evidence currently before me, I do not consider the provision of a dwelling on the site is needed for the proper functioning of 'The Quiet View'.

15. A further troubling aspect of the appellants' stance is that, in effect, they have sold away an adjoining dwelling which they have occupied for many years.⁵ This tends to undermine the credibility of the case for another dwelling in this location. The hearing was told that 146 The Street was no longer suitable for occupation by Mrs Hopthrow as, amongst other things, she was unable to manage the stairs and the provision of a stair lift was impractical. Be that as it may, there is no compelling evidence to show the adaptation of the dwelling to meet Mrs Hopthrow's needs had been thoroughly investigated. Even if there was an exceptional reason why this dwelling could not be adapted, no firm evidence has been provided to show what steps, if any, were taken to find other residential accommodation in the area that might be suitable and available for the supervision of 'The Quiet View', prior to the occupation of the static caravan.
16. Turning to the second limb of the appellants' argument, the submissions indicate that Mrs Hopthrow has multiple sclerosis, with symptoms of nerve pain, muscle pain, weakness and a consequential lack of energy. She evidently requires ground floor accommodation. I observed she uses a golf buggy to get around the garden. The appellants apparently need the support of their family, who now occupy 146 The Street.
17. I have fully taken into account the personal and compassionate considerations advanced in support of the appeals. However, with the greatest of respect to the appellants, the considerations advanced in favour of these appeals are not uncommon. Furthermore, it should be borne in mind that planning controls are concerned with the use of land rather than the identity of the user. Planning permission normally runs with the land and, as such, it is seldom desirable to provide otherwise. On the evidence before me, I am not persuaded that the personal and compassionate considerations are so compelling that they would override the need to safeguard the countryside from inappropriate forms of development, or justify the grant of permission for a dwelling on land at 'The Quiet View'.

Issue 2: Character and appearance of the site and AONB

18. The static caravan subject of Appeal A is generally screened in the summer by the deciduous hedging and trees on the site frontage. Given the density of this planting, it is also likely to be screened to some extent in the winter. The appellants have commissioned a Landscape Strategy in support of these appeals, which states "... *it is concluded that the proposals will not be significantly visible within the Kent Downs AONB within 5 to 10 years due to the proposed planting and management of the existing planting within the site.*"
19. However, to my mind, planting should not be used to hide or conceal development that is generally inappropriate to its context. There is a clear risk that such an approach, if perpetuated, could place more reliance on planting rather than intrinsically good design.
20. In the case of Appeal A, the outcome is the provision of a discordant, alien structure in this rural location. The static caravan has little visual affinity with the housing in the village, or with the scatter of buildings in the rural landscape. As the stationing of the caravan is not justified in planning terms, its continued presence upon the land is inconsistent with the development plan policies and emerging policies that give priority to the conservation and enhancement of the natural beauty of the landscape over other planning considerations.
21. I have similar concerns about the provision of the log cabin subject of Appeal B. Despite the 'rustic' nature of its design, it would have little visual affinity with the housing on the edge of the village, or with the scatter of buildings in the rural landscape. I am not persuaded that it would represent an example of 'Kentish Vernacular' development in this rural location.⁶ In my view it would neither conserve nor enhance the natural beauty of the

⁵ Whilst also apparently developing 'The Quiet View' as a garden for peace, inspiration and silence

⁶ As appeared to be inferred at the hearing

landscape, notwithstanding the landscape strategy devised on the appellants' behalf. The appellants' willingness to remove the static caravan, plus an older caravan and other structures upon the site would not overcome the objections to this particular development.

22. The appellants argue the enlargement of 146 The Street (for example, to provide an annexe) would have a greater impact on the landscape. However, this argument is not supported by any firm evidence. It is difficult to see how a sensitively designed enlargement to the dwelling would be comparable to the impact of a stand-alone caravan or log cabin.

Summary

23. For the reasons given above, I conclude the development subject of these appeals would constitute an inappropriate form of development within this rural location. The development would also harm the character and appearance of the area and AONB, contrary to the aims of the relevant planning policies including BE1 and R6 of the Local Plan and emerging policies LB1 and LB2. I do not consider the development falls within the category of development envisaged in paragraph 2.58 of the explanatory text to policy H9. In more general terms, the development is not supported by Local Plan policies H1 or H9.
24. The Council's concern to protect the countryside and the AONB is broadly consistent with the objectives of the National Planning Policy Framework (NPPF). Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the natural and built environment. Paragraph 55 indicates that planning authorities should avoid isolated new homes in the countryside unless there are special circumstances, for example, the essential need for a rural worker to live at or near their place of work. Paragraph 115 also indicates that 'great weight' should be given to conserving landscape and scenic beauty within National Parks and AONB's - which have the highest status of protection in relation to landscape and scenic beauty. I consider the current development conflicts with these objectives.

Other Considerations

25. The submissions for the appellants allege the Council's policies for the protection of the area are 'diminished' by the absence of a 5-year supply of housing land. Reference is made to an assessment of housing land supply and to an appeal decision in support of this claim. However, this argument is refuted by the Council. At the hearing the Council's representative indicated that an updated housing trajectory prepared by consultants shows there is a 5.39-year supply of housing land. The appellants' professional advisor challenged this figure. However, the situation is evidently evolving.
26. In any event, it seems to me that arguments concerning the adequacy of the Council's supply of housing land are of marginal relevance to the development before me, given that this is intended to be temporary accommodation or for the lifetime of the appellants only.
27. Having said that, even if there was firm evidence to demonstrate there is a shortfall in the supply of housing land (sufficient to override the constraints of the Council's policies), it would still be necessary for me to assess the sustainability credentials of the development, with particular reference to the economic, social and environmental dimensions of sustainable development (as set out within paragraph 7 of the NPPF).
28. With respect to economic considerations, the occupiers of the accommodation may well contribute to the local economy. The Council has not suggested otherwise, albeit the inference is that the economic benefits would be 'modest'. Visitors to the garden might contribute to tourism and the rural economy. However, the economic benefits involved have not been quantified. There is no evidence to suggest that these benefits would be significant.
29. In terms of social considerations, there is no dispute that the appellants have strong connections with the village. It is also clear from the various letters of support that the appellants are well regarded members of the community. 'The Quiet View' also appears

to be a valued facility. Arguably, it contributes to the support of a strong, vibrant, healthy community. There is no evidence to suggest the scale of the housing in these cases would place unacceptable demands on local infrastructure or services, or that it might lead to an undesirable increase in the population or imbalance in the community.

30. Turning to environmental considerations, paragraph 7 of the NPPF makes it clear that sustainable development should contribute to the protection and enhancement of the natural, built and historic environment. Paragraph 9 of the NPPF also confirms that pursuing sustainable development involves seeking positive improvements in the quality of the natural, built and historic environment, as well as people's quality of life.
31. In this instance, I have found the development would harm the character and appearance of the area and the AONB, contrary to the aims of the relevant development plan policies. Moreover, 'The Quiet View' lies beyond the built-up extent of the village. The site also appears to be fairly remote from services and facilities and does not appear to be well served by a range of public transport. This is not a sustainable location for new housing.
32. Weighing all the relevant considerations in the planning balance, I conclude that even if the development were to be assessed primarily against the NPPF, the adverse environmental impact of these schemes would significantly and demonstrably outweigh the considerations advanced in their favour. Overall, I find they constitute an unsustainable form of development. It is pertinent to note the Courts have held the presumption within paragraph 14 of the NPPF applies only to sustainable development.

Human Rights Act and the Public Sector Equality Duty

33. The appellants have not made any submissions under the Human Rights Act concerning Article 8 (Private Life and family) or Article 1 of the First Protocol (Property). Nonetheless, I recognise the dismissal of the current appeals would interfere with their rights to respect for a family life and home and peaceful enjoyment of their property.
34. However, the appellants' individual rights under Article 8 must be balanced against the wider public interest including the protection of the countryside and the AONB from harmful development. The local and national planning policies which aim to regulate development in the countryside and AONB apply with equal force to the whole population. I am satisfied these legitimate aims can only be adequately safeguarded by dismissing the appeals. I find the dismissal of these appeals would not have a disproportionate effect on the appellants. For the same reasons, I consider their treatment and interference with the peaceful enjoyment of their property is proportionate and strikes a fair balance in accordance with the requirements of Article 14 and Article 1 of the First Protocol.
35. In reaching my decision on these appeals, I have also had due regard to the provisions of the Public Sector Equality Duty contained in the Equality Act 2010, which amongst other things, requires consideration to be given to the need to eliminate discrimination. However, in this instance, I am not persuaded there are any factors of sufficient weight that would justify the grant of planning permission for the development before me.

Conclusions

36. It is not obvious to me that the objections to the development could be overcome by any planning conditions. For the reasons given above, I intend to uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application. I conclude that Appeal B should not succeed for similar reasons.
37. I have taken into account all the other matters raised in the written representations and at the hearing, including the concerns expressed by the appellants about the way in which the Council considered the application subject of Appeal B. However, I find they do not alter or outweigh the main considerations that have led to my decisions.

Formal Decisions

Appeal A: APP/J2210/C/16/3147709

38. I direct that the enforcement notice be corrected by deleting all the words in paragraph 3 after the heading 'THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL' and replacing them by the following words: '*The change of use of land for the stationing of a caravan for residential occupation and facilitating development comprising steps and a porch.*'
39. Subject to the above correction, the appeal is dismissed, 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: APP/J2210/W/16/3149832

40. The appeal is dismissed.

Nigel Burrows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Goddard	Goddard Planning Consultancy
Mrs (Revd) E Hopthrow	The appellant
Mr J Hopthrow	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Bloom	Canterbury City Council
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INTERESTED PERSONS:

Revd J Richards	Interested person
Rev M Walling	As above
Dr T Hopthrow	Local Resident
Dr G Randsley de Moura	As above
Cllr S Cook	Leader, Canterbury City Council
Miss M P Ambrose	Local Resident
Mrs E Gregory	As above
Miss D Martin	Chair of the Parish Council
Mrs McWilliams	Clerk to the Parish Council
Mr R Reeves	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1 Policy R6 of the Local Plan, supplied by the Council

Document 2 List of 'saved' Local Plan policies, supplied by the Council

Document 3 Appeal A: Suggested matters for planning conditions

Document 4 Appeal B: Suggested matters for planning conditions