

Appeal Decision

Site visit made on 31 October 2016

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 30 November 2016

Appeal Ref: APP/J3720/C/16/3148482

Land at Forshaw Lodge, Forshaw Heath Lane, Earlswood, Solihull B94 5LJ

- 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 James Anderson against an enforcement notice issued by Stratford-on-Avon District Council.
- The enforcement notice was issued on 4 February 2016.
- The breach of planning control as alleged in the notice is set out in the Annex attached to this Decision.
- The requirements of the notice are set out in the Annex.
- The period for compliance with the requirements is set out in the Annex.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the initial appeal on ground (a) and 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 Decision: The appeal is dismissed and the enforcement notice is upheld as corrected in the terms set out below in the formal decision.

Preliminary matters

1. Some representations focus, in part, on planning merits, for example, the need for the mobile home. I am afraid that such matters inform only the merits of the allegation rather than considerations related to those grounds of appeal chosen by the appellant; my decision is solely concerned with the latter. As there is no ground (a) appeal or deemed application for my consideration, I shall have no regard to the planning merits of the alleged development.

The notice

2. There are a few matters relating to the description of the alleged breach that require my detailed examination with a view to correct the notice, subject to the essential test of injustice. The siting of a mobile home on land outlined in red (on the plan attached to the issued notice) is undisputed. It is apparent to me that the allegation should state the following:

Without planning permission, the material change of use of the land from use as single dwellinghouse and agriculture into a mixed use comprising single dwellinghouse, agriculture and a residential caravan site facilitated by the stationing of a mobile home.

Step 5 h) is superfluous because removal of the caravan would cease the caravan site use of the land.

3. The issued notice is erroneous, but it does not necessarily follow that it is fundamentally flawed. It clearly alleges carrying out development without
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planning permission; both allegation and requirements are unambiguous. That is how the appellant interpreted it. The recipient was well aware of what has gone wrong and what is required to remedy the situation. The nature and manner in which the appellant and local planning authority has presented their respective cases indicates that the description of the allegation and requirements has caused no confusion.

4. I do not consider that the envisaged corrections expand the notice's scope nor make the requirements any more onerous than first issued. I am satisfied no injustice is caused by the corrections to any party. I shall therefore correct it.

Ground (b)

5. In pursuing this challenge, the onus is firmly upon the appellant to show that, at the point of issue, matters stated in the corrected notice have not in fact occurred, on the balance of probabilities.
6. Forshaw Lodge comprises a single dwellinghouse, residential curtilage and off-street parking space as well as a small paddock. Mr Anderson claims the mobile home is for ancillary purposes incidental to the enjoyment of the dwelling as such. He says that his grandchildren and wife use it for relaxation and time-out sessions. Nevertheless, it is physically separate and includes facilities for day-to-day private domestic existence. It has drainage connections and its design and layout is conducive to self-contained residential use. In an area between the caravan and a close-boarded fence, outdoor furniture and a timber shed is on display. Given the area's dislocation from the host dwelling and close association to the caravan, it has an appearance of domesticity.
7. I am afraid that there is no cogent evidence to substantiate any ancillary or incidental use of the static caravan, prior to the issuing of the notice. For example, it is unclear as to why bottled gas and a generator are required to provide energy to the mobile home. Additionally, there is no precise and unambiguous evidence to counter the Council's assertion that, for local taxation purposes, the mobile home is separately registered. Mr Anderson provides no plausible explanation to make less than credible the claim that lights are on after dark as part of a daily routine. There is a distinct lack of evidence as to the nature and scale of any ancillary or incidental use, especially during the period leading up to the issuing of the notice.
8. The quantum of evidence does not show, to my satisfaction, a clear functional link between the occupation and use of the mobile home and dwellinghouse. In all probability, at the issue date, the stationing of a mobile home for human habitation had resulted in a material change in the character of the land's mixed use. The latter comprises dwellinghouse, agriculture and a residential caravan site facilitated by the stationing of a mobile home.
9. As a matter of fact the matters alleged in the corrected notice occurred. Therefore, ground (b) must fail.

Ground (f)

10. It is apparent from the wording of the issued document as a whole that the notice seeks to remedy the breach of planning control by restoring the land to its condition before the breach occurred. It is necessary to examine whether

the steps required to comply with the corrected notice are excessive. In this context, Mr Anderson's arguments focus on the mobile home.

11. Clearly, the stationing of a mobile home facilitates the residential caravan site use of the land. The requirement to cease the unauthorised use and remove the mobile home is consistent with the corrected allegation. Failure to specify that requirement would not satisfy the notice's purpose, which is to remedy the breach of planning control by restoration.
12. Mr Anderson could bring back the mobile home for an ancillary or incidental purpose but that type of use would be materially different to the unauthorised use of the land as stated in the corrected notice.
13. I find that the steps required to comply with the corrected notice are not excessive. Therefore, ground (f) fails.

Conclusions

14. For all of the above reasons, and having regard to all other matters, I conclude that the appeal should not succeed.

Formal decision

15. It is directed that the notice be corrected by:

- (1) The deletion of all of the text in section 3: the breach of planning control alleged, and substituted therefore by the following text:

Without planning permission:

The material change of use of the land from use as a single dwellinghouse and agriculture into a mixed use comprising single dwellinghouse, agriculture and a residential caravan site facilitated by the stationing of a mobile home;

The creation of an area of hardstanding (in the approximate area shown hatched black in the plan attached to the enforcement notice), and

The erection of a means of enclosure in excess of 1 metre in height (on the approximate alignment marked 'Y-Z' on the plan attached to the enforcement notice).

- (2) The deletion of section 5: what you are required to do, sub-section h) and substitution therefore with the following requirement:

Sub-section h): Cease the use of the land as a residential caravan site and remove the mobile home from the land.

16. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector

Annex to appeal decision ref APP/J3720/C/16/3148482

Section 3: THE BREACH OF PLANNING CONTROL ALLEGED

- 1) Without planning permission, the change of use of the land from a dwellinghouse with associated domestic use (within the area coloured green on the Plan attached to the enforcement notice) and agriculture (within the area coloured dark pink on the Plan attached to the notice) to a mixed use comprising: a) agriculture; b) a dwellinghouse with associated domestic use; c) the stationing of a caravan for purposes that are not incidental to the enjoyment of the dwellinghouse (in the approximate position marked 'X' on the Plan attached to the enforcement notice).
- 2) Without planning permission the creation of an area of hardstanding (in the approximate area hatched black on the Plan attached to the enforcement notice), which facilitates the change of use described above.
- 3) Without planning permission the erection of a means of enclosure in excess of 1 metre in height (on the approximate alignment marked 'Y-Z' on the Plan).

Section 5: WHAT YOU ARE REQUIRED TO DO

- a) Either remove the fence along the alignment 'Y-Z' or reduce the fence along the alignment 'Y-Z' to a height not exceeding 1 metre.
- b) Remove the hardstanding from the area hatched black and restore this area to grassland.
- c) Remove all domestic features, namely the play equipment and garden furniture, from the area coloured dark pink.
- d) Remove the caravan from the Land.
- e) Erect a means of enclosure (of a height measuring at least 0.8 metres) along the boundary A-B-C-D-E-F-G-H on the Plan attached to the enforcement notice.
- f) Cease the use of the area coloured dark pink for the parking of vehicles for domestic purposes.
- g) Cease the domestic use of the area coloured dark pink.
- h) Cease the use of the land for the stationing of a caravan for purposes that are not incidental to the enjoyment of the dwellinghouse.

Section 6: TIME FOR COMPLIANCE

- a) - h) inclusive: Within 4 months from the date this notice takes effect.