
Appeal Decisions

Site visit made on 12 December 2016

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 6 January 2017

Appeal A: Appeal Ref: APP/M1710/C/16/3150264 and Appeal B: Appeal Ref: APP/M1710/C/16/3149187

Land at Lot 10b Comley Hill, Mays Coppice, Whichers Gate Road, Rowlands Castle, Hampshire

- 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 Adam Wilson (Appeal A) and Miss Jennifer Ellyatt (Appeal B) against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice was issued on 29 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission and within the last ten years, the change of use of the Land to use as a residential caravan site.
 - The requirements of the notice are:
 - i) Cease the use of the Land as a caravan site for residential purposes
 - ii) Remove all caravans from the Land and all associated items including but not exclusive to: three sheds, gas bottles, generators and vehicles.
 - iii) Dig up, disconnect and remove any electricity, gas and water supply/pipework from the Land and remove any resultant debris.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended
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Decisions

Appeal A: Appeal Ref: APP/M1710/C/16/3150264 and Appeal B: Appeal Ref: APP/M1710/C/16/3149187

1. It is directed that the enforcement notice is varied by the deletion without substitution of the words "three sheds" in paragraph 5(2) of the notice (*what you are required to do*) and the deletion of the words "electricity, gas and water" and their replacement by "electricity and gas" in paragraph 5(3) of the notice (*what you are required to do*). Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

Appeals A and B: the appeals on grounds (c) and Appeal B: the appeal on ground (b)

Introduction

2. In appeals on these grounds the burden of proof rests on the appellants. In short, the court has held that the appellants' evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence of its own or from others to contradict or
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otherwise make the appellants' version of events less than probable, there is no good reason to dismiss the appeals provided that the appellants' evidence alone is sufficiently precise and unambiguous to justify allowing them. The evidential test is the balance of probabilities.

3. An appeal on ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. As I understand the separate cases made it is the characterisation of the land in the breach of planning control as a 'caravan site' that is denied. However, technically, where planning permission is granted for, or the use deemed to be lawful is for, the siting of a caravan for residential purposes, the site becomes a caravan site for the purposes of the Caravan Sites and Control of Development Act 1960.
4. As I understand it the stationing of the recreational vehicle (RV) on the land for residential purposes is not denied by the appellants. It is the purpose of that residential use that is in dispute. If that amounts to development for which planning permission is required the appeals on ground (c) would fail and the description of the breach would be correct. If the converse was demonstrated, the appeals on ground (c) would succeed and the notice would be quashed. To that extent, the appeal on ground (b) follows those on ground (c); I shall therefore deal with them together.

Background

5. The appeal site is a small plot of land that the Council says amounts to some 0.1 hectares. The appellants do not dispute that figure. The plot and several others in the vicinity have been created, as I understand it, from the subdivision of farmland associated with Mays Coppice Farm. The use of these plots varies as does the amount and nature of the buildings upon them.
6. The appeal plot is adjacent to plot 5b. This was the subject of an enforcement notice issued in July 2015. The breach alleged was 'without planning permission, the change of use of the land to use of the land as a residential caravan site'. Among other things the requirements were to cease the use of the land as a caravan site and to remove all the caravans. One of the recipients of the notice was Mr Wilson.
7. The requirements of the notice were complied with. However, the Council's record of a site visit on 1 December 2015 notes that the two caravans (one of which was the RV) had simply been moved to the adjoining plot of land, the appeal site.
8. Included in the Council's planning history section of the appeal statement is information about two notices issued in December 2010. Both were subject of appeals determined in September 2011 but no party has provided these appeal decisions. Although I note that an appeal was allowed in respect of one building, I have no evidence as to which building that was or even if it still exists. The other notice was quashed. This related to the siting of a caravan on the land. The purpose for which it was sited is not stated in the description given by the Council. The appellants say that this was removed at the Council's insistence when it became vandalised. It is their evidence that the RV replaced it. However they say nothing more about it. In the officer report seeking authority to take the enforcement action that is the subject of this appeal there is no mention of either of these notices or appeals.

9. The other relevant planning history that is mentioned is a planning permission granted in August 2014 for the 'replacement of existing building'. I have no further evidence about this planning permission. During my site inspection, the appellants pointed out to me the footings and base of what was claimed to be the building in question. The local planning authority did not disagree with what was pointed out.

Reasons

10. An appeal on ground (c) is that the development alleged does not amount to development for which planning permission is required. As I understand it there are two limbs to the appellants' case. I have given little weight to the appellants' further assertion that the RV somehow has 'permission' since no evidence has been provided to support that claim.
11. The essence of the first limb relates to what is claimed to be the agricultural use of the land and the need to tend the sheep, particularly during lambing. The number of sheep kept appears to vary although it is never great and there were 11 at the date of my site inspection. In her appeal statement Miss Ellyatt refers to eight lambs. The gist of the cases made is that the RV provides a rest and refreshment facility that can also be used for overnight accommodation when the sheep need tending, for example during lambing. It is argued that planning permission is not required for such a use.
12. The keeping of sheep falls within the definition of 'agriculture' given in s336(1) of the Act. It does not seem from s55(2)(e) that there is a lower limit to the size of the plot being used for the purposes of agriculture below which benefit from the exemption conferred by that sub section is not available. The Council's reference to Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (GPDO) is therefore erroneous in this context. The court has held that the stationing of a caravan on agricultural land for purposes ancillary to the agricultural use is not a material change of use and thus not development requiring planning permission¹. Although not put in quite those terms, I understand that to be the appellants' case on this limb.
13. At the time of my site inspection the RV was equipped with all the facilities necessary to provide residential accommodation and appeared to be occupied in that way. However, if it was being used as claimed by the appellants under this limb of their case that might also be how it might appear. It is necessary therefore to look at the Council's contrary evidence.
14. Its own evidence is based on what it has been told by the appellants and what it has been able to see during inspections of the site. It has also taken into account the evidence of others.
15. It served a Planning Contravention Notice (PCN) in December 2015 on Miss Ellyatt. Her answers to some of the questions are somewhat vague. She confirms that the land became used for the siting of two caravans shortly before the Council's visit in December 2015 previously referred to. She does not answer the question 'are the caravans used for residential purposes?' directly. Instead she says that her 'understanding' is that they are not. That seems a strange answer if the purpose is as now claimed which, as landowner

¹ *Wealdon District Council v Secretary of State for the Environment* [1988] JPL 268 CA

and, as far as I understand it, the owner of the sheep, she should have been aware of even if she did not actually encourage it. Neither does she answer the alternative question 'how are the caravans used?' directly. Instead, she says that she has permission for one as 'a store, dry for animal food, etc' and explains her understanding of the 28 day use right in respect of camping. Read carefully, she does not say what the use of either actually is.

16. The Council visited the site on 23 December 2015. The record of observed residential use relates to the touring caravan. In her answers to the PCN the appellant advised that this would be moved in January 2016. It was not there when I visited the site. However, during the Council's visit, the occupier, Mr Kerridge, said that he and the owner of the RV (Mr Wilson) were staying on the land to build a barn. Mr Wilson arrived sometime during this conversation and stated that he visited the site every day and stayed there when Mr Kerridge was not present. The appellants dispute the account of this and other conversations. In answer to Q14 which asks if there is any further information that she believes might be relevant, she simply asserts that the contravention has not taken place and wants the evidence that it has 'by return'. She does not, for example, explain how the land is used for agriculture.
17. The Council also visited the site on 12 January 2016 (the officer report says 2015 but from the context that must be wrong). Officers were denied access to the RV by Mr Wilson and do not appear to have ever seen inside it before issuing the notice. The Council also appears to have placed considerable weight on the undisputed fact that in complying with the requirements of the notice on the adjoining plot, the appellants simply shifted the RV to the appeal site. The inference clearly drawn by the Council is that the use did not stop; it merely transferred to another plot.
18. The Council acted upon information received from local residents about the use of the land. Following notification of the appeals the Planning Inspectorate received some letters from local residents. In my judgement these go to the presence of the various vehicles on the land rather than their use. The appellants contend that they are being victimised by one local resident in particular who they assert tried but failed to purchase the land.
19. In coming to a conclusion on this limb of the appellants' case I am conscious that the burden of proof lies with them. In my view that burden has not been discharged in this case. There have been at least two opportunities to address the Council's reasonable investigations of complaints made to it about the alleged use of the land. The first was the PCN where more assistance could have been given by direct and unambiguous answers. The second was allowing the Council officers to view inside the RV. In my view, the Council and, on appeal, the Secretary of State, are entitled to draw conclusions on the balance of probability from the answers given and the actions taken. Moreover, accepting the notice relating to the adjoining plot which alleged the same unauthorised use but complying with the requirements by simply relocating the development to the appeal site is suggestive that the use has not ceased at all.
20. I acknowledge that both appellants have addresses elsewhere. There is, as I understand it, no suggestion that Miss Ellyatt resides at the appeal site. However, Mr Wilson has produced no evidence to confirm that he lives at the property in Denmead. There is no unambiguous evidence to explain why what

on any measure is a small-scale agricultural use requires ancillary day and night accommodation to be provided by the RV permanently on site. Taking all these factors into account I do not consider on the balance of probabilities that this limb of the appellants' case has been made out.

21. The second limb is that the stationing of the RV is permitted by Schedule 2, Part 4, Class A of the GPDO since it is required in connection with the construction of the barn. This is what the Council says that Mr Kerrige told its officers as being the reason for the caravan and the RV being present. It is also part of the appellants' case. It is nevertheless a wholly different argument to the agricultural one also set out by the appellants and considered above.
22. Now that work appears to have commenced on the building there may be some substance to this part of the appellant's case. However, the GPDO right is available only where the provision of the buildings, moveable structures, etc is 'required'. No evidence has been put forward as to why the RV is required for this purpose. For example, no unambiguous evidence has been provided as to who the building contractor is or why residential presence is required. If it is Mr Wilson, he has a home already and it has not been explained why he could not travel to site each day. Furthermore, the deemed permission granted is temporary only. Once the operations, namely the erection of the building in this case, have been carried out, the temporarily permitted buildings, structures, etc must be removed.
23. It is clear from the officer report that the period for compliance has been set in expectation of works to implement the planning permission being carried out. Once they have been the RV would be required to be removed in any event. In all these circumstances I do not consider on the balance of probabilities that the appeals on ground (c) should succeed on this limb.

Conclusion on grounds (b) and (c)

24. For the reasons set out I do not consider that the appellants have explained on the balance of probability that the residential use of the RV is ancillary to any agricultural use of the land. It does not benefit therefore from the exemption from the definition of development set out in s55(2)(e) of the Act. Nor have the appellants shown that the RV is required for the purpose of Schedule 2, Part 4, Class A of the GPDO. In any event, the period for compliance, not challenged by way of an appeal on ground (g), anticipates the permitted building being erected and the RV being removed in accordance with the conditions of the Part. The development alleged is therefore development requiring planning permission and the appeals on ground (c) therefore fail. It follows also that the development alleged has taken place as a matter of fact and the Appeal B on ground (b) also fails.

The requirements

25. Although there is no explicit appeal on ground (f) from either appellant it seems to me that the requirement to remove the three sheds is not necessary to remedy the breach of planning control and is thus excessive.
26. Although both the officer report seeking authority to issue the notice and the notice itself both refer to the sheds being in association with the unauthorised residential use of the site, there is no evidence of that being the case. At the time of my site visit the two smaller buildings were used as an animal shelter

and a dry store respectively while the larger one nearer to the RV was laid out as a workshop. Each of these observations is consistent with the appellants' evidence.

27. The erection of the buildings is not part of the allegation. To be included within the requirements relating to an allegation of a material change of use (as here) the court has held that the works must be integral to and solely for the purpose of facilitating the unauthorised use. That is not what the Council is arguing here and is clearly not the case in any event. I shall therefore vary the requirements to remove all reference to the three sheds.
28. I also agree with the appellants that the requirement to remove the water supply is excessive when there are animals kept on the land. With respect to the electricity and gas supply, the requirement is to remove 'any' such supply from the land. If there is none as the appellants contend then, self-evidently, there is nothing to be done by way of compliance.

Overall conclusions

29. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations.

Brian Cook

Inspector