
Appeal Decisions

Site visit made on 24 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 23 February 2017

Appeal A Ref: APP/C3105/C/16/3154976

Appeal B Ref: APP/C3105/C/16/3154977

OS Parcel 4400 South of Manor Farm House and East of North Aston Hall Farm, Somerton Road, North Aston, Oxfordshire

- 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 Mrs Jane Durnin (Appeal A) and Mr Peter Durnin (Appeal B) against an enforcement notice issued by Cherwell District Council.
 - The enforcement notice, numbered MJ/16/00018/EUNDEV, was issued on 21 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agricultural use to residential use including:
 - (1) The erection of a dwelling (as indicated on the attached plan), decked veranda to the side of the dwelling, porch to the front of the dwelling and a timber wooden shed to the rear of the dwelling, on the Land.
 - (2) Building an access track from the main road across the Land to the dwelling (as indicated on the attached plan); and
 - (3) Stationing ancillary domestic paraphernalia on the Land including a number of gas canisters, screened by a weaved wicker screen, wooden garden furniture and children's outdoor toys.
 - The requirements of the notice are:
 - (1) Remove from the Land the:
 - i. Dwelling,
 - ii. Decked veranda,
 - iii. Porch,
 - iv. Timber wooden shed,
 - v. Ancillary domestic paraphernalia associated with the unauthorised use of the Land including garden furniture, children's outdoor toys and gas canisters screened by weaved wicker screen; and
 - vi. Access track serving the dwelling.
 - (2) Remove from the Land all materials (including building materials), equipment, installations, and constructions brought onto the Land in connection with the erection of items as mentioned in (1) above.
 - (3) Make good any damage caused to the Land by the erection and removal of the items mentioned in (1) above.
 - The period for compliance with the requirements is 84 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(e), (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.
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Procedural matter

2. The appellants' surname on the appeal form is given as 'Durnham'. It was clarified at the site visit that the appellants' correct surname is 'Durnin'. I have therefore used the correct surname in my decision.

Application for Costs

3. An application for costs was made by Mr Peter Durnin and Mrs Jane Durnin against Cherwell District Council. This application is the subject of a separate Decision.

The appeals on ground (e)

4. Ground (e) is concerned with whether a copy of the enforcement notice was properly served as required by s172(2) of the 1990 Act. The appellants maintain that whilst they received a copy of the notice, the owner of the land, Mr Vincent Fuoco, to which it relates, did not and his interests have been substantially prejudiced as a result. In a ground (e) appeal the burden of proof is firmly on the appellants and the test is the balance of probability.
5. The Land Registry search¹ issued on 23 May 2016 identifies Mr Vincent Fuoco , 1 Somerton Road, Upper Heyford, Bicester, Oxfordshire OX35 5LB to be the registered owner of the land indicated on the plan attached to the enforcement notice. The Council served the notice on Mr Fuoco by hand by placing it through the letter box of this address. Thus the requirements of s329 (1) (b) of the Act were satisfied. There is no requirement for the Council to serve a planning contravention notice as a prerequisite to issuing an enforcement notice as suggested by the appellants. Moreover, I have been provided with no evidence to show that Mr Fuoco has moved from this address and thus did not receive a copy of the notice.
6. Given the representations made by the appellants, I do not consider that the involvement of the owner would have made any significant difference. Their interests have been protected by the appellants' appeal. Thus, it seems to me that there is no evidence of any substantial prejudice to the owner. The appeals on ground (e) therefore fail.

The appeals on ground (b)

7. Under this ground of appeal the onus of proof is on the appellants to show that the alleged breach of planning control has not occurred as a matter of fact.
8. The allegation in the enforcement notice refers to a material change of use of the land from agricultural to residential use including (1) the erection of a dwelling.
9. The appellants' argue that the alleged unauthorised development has not occurred because a mobile home has been placed on the land and this does not amount to the erection of a dwelling.

Is the mobile home a caravan?

10. The appellants contend that the mobile home is a caravan as defined in s29(1) of the Caravan Sites and Control of Development Act 1960. The appellant also

¹ Appendix C of the Council's statement.

refers to the definition of a twin-unit caravan in the Caravan Sites Act 1968. The mobile home is a structure designed or adapted for human habitation. From the evidence before me it was brought onto the site without requiring assembly and is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer). Having regard to its size, I am advised that it also meets the definition of a twin-unit caravan. Even if the mobile home is not a twin unit I consider that it is a caravan whichever definition of caravan is used.

Is the mobile home a building?

11. The Council consider that having regard to its degree of permanence and attachment to the land the mobile home cannot be considered as a caravan. There are three factors which are relevant to establish whether or not a structure results from a building operation.

Size

12. In this case the size of the mobile home is not, by itself, a decisive factor as it is also of a size that could reasonably be regarded as a building.

Physical attachment to the ground

13. The mobile home has a set of steps leading through a porch to the door. It has a wooden skirt along its front and rear through which the way in which it is supported can be seen. The mobile home is not attached to the ground. Rather it is supported by concrete blocks and I could see wheels were attached. The veranda consists of a large box-like structure which butts up to the mobile home. I saw nothing to suggest that either the veranda or porch is attached to the mobile home but are likely held in position by their own weight. In my judgement the steps, porch and veranda do not affect the mobility of the main unit. Moreover, the utility services could be easily detached. This factor is suggestive that the mobile home is not a building.

Permanence

14. The mobile home was first brought onto the land in 2014. The Council argue that the mobile home has a degree of permanence as it has not moved since and that it would be time consuming and costly to move it elsewhere on the land.
15. The appellants contend that the mobile home is capable of being moved by road as one whole unit. It seems to me on the balance of probability that with the necessary support there is no reason why the whole mobile home could not be lifted in one piece without sustaining significant damage and moved to another location.
16. I therefore conclude that although a major part of the allegation refers to a material change of use, the erection of a dwelling has not occurred as a matter of fact. Therefore the appeal under ground (b) succeeds.

Can the notice be corrected without injustice?

17. It seems to me that the matter which appears to constitute a breach of planning control is the stationing of a mobile home used for residential purposes. I have considered whether I could correct the notice by deleting the reference to dwelling in the allegation.

18. To change the allegation to reflect these matters would significantly alter the notice, and the appellants have not had the opportunity in these appeal proceedings to respond to that change. Consequently, the appellants would be at a distinct disadvantage if the notice was corrected to reflect the true situation, and injustice would be caused to them.
19. The material change of use needs to be identified in the allegation but the requirements can seek both the use to cease and works carried out to facilitate that use to be removed. The notice does not require the residential use to cease, and from my findings above the appellants would not therefore be prevented from using the land for residential purposes once they have complied with the requirements of the notice as drafted. The outcome of the requirements as drafted could be that the siting of a mobile home for residential use would be treated (once the requirements of the notice had been complied with) as though it had planning permission, by virtue of s173(11) of the 1990 Act. That would not be the outcome intended by the Council. The notice could not be varied to make the requirements of the notice more onerous without causing injustice to the appellants.
20. Also, there are some minor points in the notice which I consider could be corrected without causing injustice.
21. The items referred to in paragraph 3.(3) of the notice ('The matters which appear to constitute a breach of planning control') do not amount to development and are correctly included in the requirements of the notice. Therefore this paragraph could be deleted without causing injustice.
22. In relation to paragraph 4. ('Reasons for issuing the notice'), the notice is directed at a material change of use. Therefore having regard to s171B(3) of the 1990 Act no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. This correction could be made without causing injustice as it is clear from the submissions that the residential use commenced in 2014 and therefore the appellants have not been prevented from making an appeal under ground (d).

Conclusion

23. For the reasons given above, I conclude that the enforcement notice does not accurately identify the alleged breach of planning control and the steps required for compliance. It is not open for me to correct the error in accordance with my powers under s176(1)(a) of the 1990 Act since I cannot be satisfied that no injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under ground (g) as set out in s174(2) of the 1990 Act as amended do not fall to be considered.

Elizabeth Jones

INSPECTOR