
Appeal Decision

Site visit made on 27 February 2017

by John Whalley

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

Decision date: 07 March 2017

Appeal ref: APP/J3720/C/16/3156621

King Stone Farm, Little Rollright, Chipping Norton OX7 5QB

- The appeal was made by Mr David Haine and Mrs Jenifer Haine under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Stratford-on-Avon District Council.
- The notice was issued on 3 August 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the change of use of the Land from agricultural to a mixed use of agriculture and the stationing of five caravans for storage and intermittent residential purposes not related to agriculture, (in the approximate positions marked 'A', 'B', 'C', 'D' and 'E' on plan 2 attached to the notice.
- The requirements of the notice are to:
 - a) Remove the caravans from the Land;
 - b) Cease the use of Land for the stationing caravans for storage and intermittent residential purposes; and
 - c) Remove from the land (edged in red on Plan 1 attached to the notice) all structures, domestic materials, equipment and other domestic paraphernalia associated with the residential use of the caravans.
- The period for compliance with the requirements is 6 months.
- The appeal was made on ground (a) in respect of the 5 caravans. An appeal on ground (d) was made for caravan 'A'.

Summary of Decision: The decision is split. The enforcement notice is upheld in respect of caravans 'B', 'C', 'D' and 'E'. Temporary conditional planning permission is granted for caravan 'A'.

Appeal land

1. King Stone Farm, its farmhouse, extensive buildings and attached pasture land for the Appellants' large cattle herd lie in open countryside in the Cotswold Area of Outstanding Natural Beauty. The enforcement notice was issued against the stationing of 5 caravans alleged to have been used for the purposes of storage and for intermittent residential purposes. 4 of the caravans were sited on the eastern side of the main access roadway from Cross Hands Lane to the south near the agricultural buildings. The 5th caravan, caravan 'A', was located adjacent to the southernmost building.

2. Caravan 'A' was said to have been occupied for security purposes. At the time of the appeal visit, this mobile home caravan appeared unused, save for some limited storage. Small touring caravans 'B' and 'C' were old and dilapidated. They were said to have been used in association with the Appellants' music festival. Mobile home type caravans 'D' and 'E', which share a timber staging access, were said to be occupied by a couple who had a small business nearby. They were about to move out, with a farm apprentice moving in, so as to have a farm worker available on site at all times.

The appeal on ground (d)

3. An appeal on ground (d) says the breach of planning control set out in the enforcement notice has become immune from enforcement action by the passage of time. The burden of proof in a legal ground of appeal such as this lies with the Appellants. The case of *Nelsovil v MHLG* [1962] 1 WLR 404 is authority for that position.
4. The ground (d) appeal was made in relation to caravan 'A' only. The Council said the caravan had been unlawfully used intermittently for residential purposes. Mr Haine said there had been some sort of lived in vehicle on that site for more than 10 years. From the Spring of 2003, there had been a converted bus parked there for several years. It had been occupied by a couple that worked in the locality and who provided security while Mr and Mrs Haine were building their new farm. Shortly after the couple left, the old bus was replaced by the present mobile home, known as caravan 'A'. Various people had used it since. They provided security, watching over the farm entrance.
5. The enforcement notice allegation refers to an unlawful mixed use of agriculture and the stationing of 5 caravans for storage and intermittent residential purposes not related to agriculture, in positions marked 'A', 'B', 'C', 'D' and 'E' on the notice's plan. That does not specify a use or uses for each caravan. The Council's statement, dealing with the ground (d) appeals, referred to: "the use of the land for the stationing of a caravan". That fails to set out the use of the land. Whilst the allegation in the notice refers to a residential use and a storage use, the reasons for issuing the notice only refer to the "10 year rule". However, as Mr and Mrs Haines' ground (d) appeal relates only to caravan 'A' and its residential use, I will deal with it on that basis, even though both parties wrongly refer to a 10 year immunity period. For the ground (d) appeal to succeed, it has to be shown that an unlawful residential use of the mobile home commenced more than 4 years before the date of issue of the enforcement notice and continued without interruption throughout that period.
6. In my view, there is an obvious problem with continuity of occupation during the 4 year period. In the case of *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886, the issue of continuous residential use for the 4 year period was discussed. It was held there is a difference between an established dwellinghouse when an occupier does not have to be continuously or even regularly present in order for it to remain in use as a dwellinghouse and where there is no established use; at the start of the material period the use has to be "affirmatively established" over the 4 year period. It is necessary here to see whether there were any periods of non-occupation and whether they were insignificant or not.
7. As in *Swale*, it is necessary here to consider whether there was any period during the 4 years immunity period when the caravan was not physically

occupied or shown to have been occupied, even though perhaps available for occupation, when the Council could not have taken enforcement action against the unlawful use. The case of *Thurrock BC v SSETR and Holding (CA) [2002] JPL 1278* is the authority for that test. The use could only become lawful if it continued throughout the requisite period, to the extent that if the use ceased during that period, during which no enforcement action could have been taken by the local planning authority, the time could not count towards immunity. No such evidence was provided. It was not even shown when the caravan or mobile home replaced the converted bus. On the evidence before me, it was not demonstrated that caravan 'A' was residentially occupied continuously for the period of 4 years up to the date of issue of the enforcement notice, that is, 3 August 2016. The appeal on ground (d) must fail.

The appeal on ground (a)

8. The appeal on ground (a) asks that planning permission be granted for the use of the appeal land for the stationing of 5 caravans for storage and intermittent residential purposes.
9. King Stone Farm and its land lie in open countryside within the Cotswold Area of Outstanding Natural Beauty, (AONB). The Council said that the appeal site lies outside the range of sustainable locations identified for housing development in policies CS.15 and AS.10 of the Stratford-on-Avon District Core Strategy. The site was in open countryside where policies CS.5, CS.9 and CS.11 require development to ensure that the special landscape quality and scenic beauty of the District is maintained and enhanced. The Council said that the caravans and their domestic paraphernalia, because of their location and appearance, were visually harmful to the special qualities of the Cotswold AONB. With the exception of caravan 'A', at least for a temporary period, there was no functional need for the caravans to be stationed for residential or for storage purposes on the notice land. The Council said that caravan 'A' was the least intrusive in terms of harm to the appearance of the landscape. They recognised there was an essential need for an agricultural worker to be on site. They accepted the case for the retention of caravan 'A', subject to the imposition of 2 conditions relating to its occupation and temporary nature.
10. I do not dissent from the Council's considered view on the need for caravan 'A' for agricultural residential occupation. Nor, however, do I disagree with the considerable weight of policy objection and intrusion into the countryside harm that applies to the proposed retention of the other 4 caravans. Because of the gentle rolling nature of the land around the farm complex, none of the caravans can be seen from either Cross Hands Lane to the south or from the A3400 road to the east. But that is not good reason to accept the imposition and intrusion of the appeal caravans in this most attractive rural area. Their uncompromising appearance unacceptably harms the character of the land in this part of the Cotswold AONB, an area noted for its outstandingly attractive landscape. The retention of the remaining 4 caravans would be inimical to the accepted public need to conserve and enhance the natural beauty of the AONB. Their continuing presence would also be in significant conflict with Core Strategy policies CS.5, CS.9 and CS.11. No case was made to oppose the Council's conclusions on the harm caused by the stationing of the caravans on the high quality of the surrounding landscape.
11. Although the Council said caravans 'B' and 'C' could readily be stored in a building or buildings within the farm complex, all the farm buildings were being

fully utilised and occupied. Any alternative provision for the utility provide by the appeal caravans would be a matter for Mr and Mrs Haines. Planning permission for their retention is not granted.

12. The Council set out suggested planning conditions in respect of caravan 'A' to meet the agricultural needs of King Stone Farm. I therefore split this decision by upholding the notice in respect of caravans 'B', 'C', 'D' and 'E' and by granting a temporary planning permission for the residential occupation of caravan 'A' for such occupation to be limited to an agricultural worker who needs to live on the land. Under s.177(1)(a) of the Act, I uphold the enforcement notice in respect of caravans 'B', 'C', 'D' and 'E' as shown on plan 2 attached to the varied notice, but grant a temporary planning permission for caravan 'A' to meet the Council's intent. To that extent only, the appeal on ground (a) succeeds.

FORMAL DECISION

13. The enforcement notice is varied by the deletion of paras. 5.a), 5.b) and 5.c) on page 2 of the notice and the substitution therefor of new requirements:
- a) Cease the use of Land for the stationing caravans 'B', 'C', 'D' and 'E' as shown on plan 2 attached to the notice for storage and intermittent residential purposes;
 - b) permanently remove caravans 'B', 'C', 'D' and 'E' as shown on plan 2 attached to the notice from the Land; and
 - c) permanently remove from the land, (edged in red on Plan 1 attached to the notice), all structures, domestic materials, equipment and other domestic paraphernalia associated with the residential and storage uses of caravans 'B', 'C', 'D' and 'E' as shown on plan 2 attached to the notice.
14. Planning permission is granted for the retention of caravan 'A' on the land as shown on plan 2 attached to the notice used for residential purposes, subject to the following conditions:
- 1. The residential use of caravan 'A' shall be discontinued and the caravan permanently removed from the land within 5 years of the date of this decision or upon the farmhouse becoming available for occupation whichever is the sooner.
 - 2. The residential occupation of caravan 'A' shall be limited to a person employed directly with the farming enterprise at King Stone Farm, Little Rollright, Chipping Norton OX7 5QB.
15. Subject to those variations, the enforcement notice is upheld.

John Whalley

INSPECTOR