
Appeals Decision

Site visit made on 1 February 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 25 May 2017

Appeals Ref: APP/J0540/C/16/3155437 and 3155438

Land to the rear of Compass Barn, Main Street, Ufford, Stamford PE9 3BH

- 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 Elaine Weavers-Wright and Mr Scott Weavers-Wright against an enforcement notice issued by Peterborough City Council.
 - The enforcement notice was issued on 30 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the change of use from agricultural land to use for residential garden purposes incidental to the enjoyment of the neighbouring dwelling house including the siting of a skateboard ramp (for identification purposes shown as the area shaded green on the attached plan).
 - The requirements of the notice are:
 - (i) Cease all non-agricultural use of the land
 - (ii) Demolish the skateboard ramp
 - (iii) Remove all building materials and any debris arising from the demolition from the site
 - (iv) Restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
 - The period for compliance with the requirements is:
 - 4 weeks beginning with the day on which this notice takes effect for compliance with (i) above
 - 6 weeks beginning with the day on which this notice takes effect for compliance with (ii) and (iii) above
 - 15 weeks beginning with the day on which this notice takes effect for compliance with (iv) above.
 - Appeal 3155437 is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Appeal 3155438 is proceeding on grounds (b) and (f) only. Since the prescribed fee has not been paid within the specified period for appeal 3155438, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act in relation to that appeal have lapsed.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 2 May 2017.

Summary of Decision

1. The appeals succeed in part and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.
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Procedural Matters

2. There was no appeal made specifically on ground (g) but I am requested to allow a longer period for compliance if the notice is upheld. No period is suggested as reasonable in lieu of those set out in the notice, but it is requested to be as long as possible to continue to enjoy the use of the ramp. This is not a matter that goes to the issue of what is a reasonable period to actually comply with the notice. I deal separately with the issue of whether a temporary permission should be granted for such purposes, under ground (a).
3. Requirement (i) in the enforcement notice should more accurately require the use for residential garden purposes to cease. I shall therefore correct the notice accordingly, in exercise of my powers under s176(1)(a) of the Act.

The appeals on ground (b)

4. The issue on ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The burden of proof is on the appellants to demonstrate that the alleged change of use of the land as specified in the enforcement notice has not occurred.
5. The skateboard ramp is sited on agricultural land, within a corner of a paddock which adjoins the domestic curtilage of Compass Barn. The notice treats the wider paddock area as the land to which the notice relates, and the appellants contend that the Council has wrongly alleged that the whole of the paddock area has changed to residential use. The Council was concerned that if the notice confined the area to that under the ramp, it could be moved into other areas of the paddock and avoid being subject to the notice.
6. The extent of the land used in connection with the ramp is wider than that immediately underneath it, due to the likelihood that from time to time users and spectators occupy space around it. The paddock is about 1.33ha and in single ownership. There is no physical boundary defining the area that is subject to the use and enjoyment of the ramp.
7. In deciding whether the allegation of the change of use is correctly described in the notice, the effect on the character of the rest of the paddock seems to me less relevant here than its actual use. Whilst the paddock is not cropped or grazed, the ramp use, whatever its overall effect, does not actually extend over the whole field, much of which in my view remains in agricultural use.
8. Therefore the correct allegation should be a material change of use to a mixed use for agricultural and residential garden purposes. I will exercise my powers to correct the notice under s176(1)(a) of the Act since to do so would be putting the notice in order and would not cause injustice to the parties. The appeals on ground (b) succeed to this extent.

The appeal on ground (a) and the deemed planning application

Main issues and reasons

9. The main issues are: firstly, whether the ramp is appropriately sited outside the village envelope; secondly, the effect of the ramp on the character and appearance of the area, including the Ufford Conservation Area (CA) and the Grade II listed Compass Barn; and thirdly the effect of the ramp on living

conditions of occupiers of Dovecot and Bluebell Cottages, having regard to any issues of noise, disturbance or loss of privacy.

10. The ramp is sited in open countryside outside the Ufford Village Envelope. The Peterborough Core Strategy Development Plan Document 2011 (CS) Policy CS1 restricts new development in the countryside to that essential to local agriculture and other uses, none of which apply in this appeal. The siting of the ramp and its use for incidental residential purposes therefore conflicts with this policy whose purpose is to prevent erosion of character and the incremental enlargement of villages.
11. The appellant contends that the development is sustainable and therefore acceptable in principle. Policy CS1 is relevant and although it predates the National Planning Policy Framework (Framework) that document contains nothing that persuades me that Policy CS1 should be overridden in its application to the development. This would suggest that absent exceptional circumstances, the development is not sustainable and Paragraph 14 of the Framework would not apply. I therefore give the conflict with Policy CS1 significant weight.
12. In considering the grant of planning permission I must pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. If such permission would affect the setting of a listed building, I must have special regard to the desirability of preserving its setting or any of its features of special architectural or historic interest. The Council has not assessed the significance of the effect of the ramp on the Grade II listed Compass Barn but from what I have seen there is no discernible effect on it or its setting.
13. The development is in the CA where recognition is given to the contribution that the fields and boundaries make to the landscape setting of the village, as well as to the paddock where the ramp is situated. This and the adjoining paddocks are historically significant as remnants of the enclosure process.
14. The ramp occupies a small part of the paddock and is sited close to a boundary wall and an existing building. Public views of it are from the distant footpath to the north and from the pub car park, views that are compromised by the "stables" building close by. Nevertheless within the landscape there is still an adverse effect on the character of the field boundaries and the open paddocks.
15. I would assess the impact on the significance of the CA as moderate and less than substantial in terms of the Framework's methodology of assessment of heritage assets, although still serious and unmitigated by any public benefits derived from the development. Planting would screen the ramp but would be more likely to further undermine the definition that the fields and boundaries give to the village limits. It would also tend to clothe the structure with a degree of permanence that it does not currently possess or indeed deserve.
16. The ramp is in close proximity to the garden wall of Bluebell Cottage and about 15m from that of Dove Cottage. Concerns as to noise and disturbance from its use are expressed on behalf of these residents by the parish council. Within adjacent gardens the top parts of the ramp are clearly visible, being the parts on which users stand before launching themselves down the slope. Standing on top of the ramp I saw that its use can give rise to overlooking and a sense of loss of privacy within the rear of the gardens of these properties, which although not the main sitting out areas, may be affected unexpectedly.

17. I did not have the benefit of seeing the ramp in use. It is a substantial distance from the adjacent dwellings but its use clearly has an impact on the use and enjoyment of the gardens closest to it. The evidence suggests that sustained use of the ramp, which could be difficult to control, can cause increased and unacceptable noise and disturbance for nearby residents. If the use is deemed unacceptable the appellant suggests it be allowed to continue for a five year temporary period or failing that, a one year period if necessary.
18. I accept that limiting the hours of use and screening the development would lessen the impacts for adjacent occupiers. However in my view retention of the ramp, even for a temporary period, would be likely to continue to give rise to complaints of noise and disturbance. Furthermore it would unacceptably undermine the agricultural character of the paddock. I attach considerable weight to the desirability of preserving the "edge of village" location in this part of the CA, a designated heritage asset.
19. Money has been spent on the ramp and I appreciate the desire to make some use of it but this does not justify what is to all intents and purposes a further extension of the domestic curtilage into agricultural land. The personal circumstances described in connection with its use amount in reality to no more than that it is there "simply for occasional fun".
20. I conclude that the development has introduced into the open countryside domestic paraphernalia causing substantial harm due to its location outside the village envelope. This is contrary to CS Policy CS1 and erodes the character and appearance of open fields that positively define the edge of the village and this part of the CA. Such harm is fundamentally in conflict with Policy PP2 of the Peterborough Planning Policies Development Plan Document 2012 (PPP) which resists development that has a detrimental effect on local character, as well as Policy PP17, and CS Policies CS17 and CS20 which seek to protect heritage assets and landscape settings of settlements.
21. Furthermore the use of the ramp is likely to give rise to continuing justified complaints of overlooking and loss of privacy as well as complaints of noise and disturbance to residents of adjacent properties. This is contrary to the aims of CS Policy CS16 and PPP Policy PP3 that development should not cause unacceptable impacts on living conditions of nearby occupiers.
22. For these reasons and having regard to PPP Policy PP1 and the Framework, especially Paragraph 7, the development is unsustainable and there are no personal or exceptional circumstances put forward by the appellant that have persuaded me to take a different view. The appeal on ground (a) fails and planning permission on the deemed application is refused.

The appeals on ground (f)

23. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The notice indicates that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.
24. I have already addressed the possibility of granting a planning permission conditional on limiting hours of use, planting of landscape screening and removing the ramp after a temporary period. If a notice is issued to remedy a

breach of planning control it is not appropriate on an appeal on ground (f) to explore whether lesser steps would achieve the alternative purpose of remedying injury to amenity.

25. In other words as the notice requires the recipient to restore the land to its condition before the breach took place, by levelling the ground and re-seeding it with grass, it cannot by reliance on s176(1)(b) of the Act, be turned into a notice which requires something less.

26. The appeals on ground (f) therefore fail.

Conclusion

27. For the reasons given above I conclude that the alleged change of use is incorrect as it should encompass a mixed agricultural and residential use. The appeals on ground (b) succeed to that extent. I uphold the enforcement notice as corrected, and refuse to grant planning permission on the deemed application.

Formal Decision

28. The appeals are allowed on ground (b) and it is directed that the allegation of breach of planning control in the enforcement notice be corrected by deleting "use for residential garden purposes" and replacing it with "a mixed use for agricultural purposes and residential garden purposes".

29. Subject to this correction the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR