

Appeals Decision

Site visit made on 30 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 07 June 2017

**Appeal Refs: APP/M2270/C/16/3158185, APP/M2270/C/16/3158186
APP/M2270/C/16/3158187, APP/M2270/C/16/3158189 and
APP/M2270/C/16/3158190**

Wagtail Farm, Jarvis Lane, Cranbrook TN17 2NP

- 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 Ms Julia Glasser, Mr Tomasz Talar, Mr Piotr Cuper, Mr Jozef Malinowski and Mr Grzegorz Gasior against an enforcement notice (EN) issued by Tunbridge Wells Borough Council (the LPA).
 - The enforcement notice was issued on 8 August 2016.
 - The breach of planning control as alleged in the notice is the material change of use of the land from agricultural use to a mixed use of agriculture and the stationing of a mobile home for residential purposes.
 - The requirements of the notice are as follows:
 1. Cease the use of the land for the stationing of a mobile home for residential purposes.
 2. Remove from the land the mobile home marked in its approximate position by a black box on the attached plan.
 3. Remove from the land all vehicles, items and paraphernalia associated with the unauthorised residential use (described in section 3 of this notice) of the land.
 4. Remove from the Land all resultant materials, rubble and rubbish arising from compliance with requirements 1 – 3 above.
 - The period for compliance with the requirements is Six (6) calendar months.
 - The appeal was initially made on grounds (a), (b), (d) and (f), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeals succeed to a limited degree under ground (f). Otherwise the appeals are dismissed and the enforcement notice is upheld as varied.

Matters of clarification and background information

2. As indicated above, due to the fact that the relevant fee was not paid, the deemed planning application cannot be considered. I am not empowered to deal with the appeal on ground (a) and thus cannot consider whether or not planning permission should be granted for the retention of the mobile home on the land for residential purposes. Whether the residential use is permanent or intermittent, I cannot consider an appeal under ground (a). Despite both the Council's and the appellants' references to the relevant policies which would be applicable, I can only deal, therefore, with the appeal on the other three grounds pleaded (b), (d) and (f). Thus the planning merits of the case have not been considered.

3. The allegation set out in the notice is queried. On behalf of the appellant it is indicated that the allegation is incorrect and should have stated the unauthorised

used as being for the '*parking/stationing of a caravan and its use, intermittently (temporarily) by farm workers*'. However, the allegation refers to the material change of use of the land from agricultural use to a mixed use of agriculture and the stationing of a mobile home for residential purposes. Whether this is a permanent or temporary residential use there is no planning permission in place and it does not constitute permitted development. A breach of planning control has occurred and I have, therefore, dealt with the appeal on that basis.

4. Wagtail Farm lies to the west of Jarvis Lane, approximately 230m south of its junction with Mill Lane and within the High Weald Area of Outstanding Natural Beauty (HWAONB). It also lies outside of the Limits to Build Development (LBD) as defined in the Tunbridge Wells Borough Local Plan 2006 (TWBLP), and is thus within the countryside.

5. The Council indicates that, in the summer of 2015, it was brought to their attention that caravans (at that time 4) were sited next to a barn at the farm and were being used for residential purposes. Part of the land was also being used to store building materials. It would appear that 3 of the 4 caravans were subsequently removed from the land and that the use for storing building materials also ceased.

6. An application for a Lawful Development Certificate (LDC) for use of the remaining caravan (now the subject of this appeal) for an agricultural worker was withdrawn. This was because the appellant had been informed that there was insufficient evidence to indicate that the caravan had been used continuously for residential purposes for 10 years prior to the date of the LDC application.

7. A Planning Contravention Notice (PCN) was served on the Land Registered proprietors of the land (the appellant and one other). The PCN indicated that a caravan had been stationed on the land for a period in excess of 10 years and had been used intermittently each year by agricultural workers. However, the Council was also informed by one of the owners that the caravans had been used to accommodate staff who worked on various building projects away from the site.

8. It was claimed that a Planning Enforcement Officer had indicated in 2004 that because it was an 'agricultural chattel' planning permission was not required. The Council also accepts that a caravan could be used by agricultural workers but only on a seasonal basis and not as a permanent situation. A response to one of the PCN questions indicated that, at that time, three male working colleagues shared the mobile home. At the time of my visit it was evident that the mobile home was being used for residential purposes. I was able to note a kitchen and bedroom areas. The unit was also connected to services and there is no dispute that it is being used for residential purposes.

The appeal on ground (b)

9. At section 4.3 of the notice the Council refers to the residential use of the mobile home being 'permanent' and 'unrestricted'. On behalf of the appellant it is indicated that the caravan (mobile home) has only been in use for a restricted period of up to 4 calendar months per annum for farm workers' accommodation. It is contended, therefore, that the notice should be quashed or amended since it is not articulated correctly. However, this conflicts with information given to the Council in July 2015 that the caravan(s) were used to accommodate workers on various building projects away from the site.

10. Part 5 of the PCN indicates that the mobile home has been stationed on the land for a period of 10 years and has been used intermittently each year by

agricultural workers. Agricultural land can indeed be used to accommodate people being employed in agricultural work on a seasonal basis and as long as the caravan/mobile home is removed from the land at the end of the seasonal work.

11. Having considered all of the facts of this case, I do not consider that the notice should be quashed or amended. It is clear that the appeal mobile home has been on the land for a considerable time and there is no conclusive evidence to suggest that it had only been used for seasonal work (see reference above to building works away from the site) or that it had been removed from the agricultural land at the end of each of the periods of use. Furthermore, there is no conclusive evidence to indicate that the use was only intermittent and directly related to seasonal agricultural work. Under legal grounds of appeal the onus is on an appellant to conclusively prove their case on the balance of probabilities.

12. In this case the alleged change of use has taken place. The land is agricultural and at various times over the last ten years the land has also been used for the stationing of the mobile home for residential purposes. At the time of the Council's delegated report the mobile home was occupied and this was also the case at the time of my site visit. It is stated that the other caravans had been occupied by building workers on projects not associated with the agricultural use. As a matter of fact, therefore, I conclude that what is alleged in section 3 of the notice has taken place. It follows that the appeal on ground (b) must fail.

The appeal on ground (d)

10. To succeed on this ground of appeal again the onus is on the appellants to conclusively show that the mixed agricultural use and stationing of the mobile home for residential purposes has been continuous for a full 10 year period prior to the issuing of the notice. On the appellant's own evidence it is clear that this cannot be the case and this is reinforced by the withdrawal of the LDC application.

11. I acknowledge that the mobile home may have been stationed on the land for a 10 year period, but it has not been shown that it was in a separate residential use without interruption for that period. The appeal must also fail, therefore, on ground (d).

The appeal on ground (f)

12. Under this ground of appeal it is argued that the requirements of the notice are excessive on two counts. First of all it is stated that compliance would prevent the permitted development rights of the owner under Class B part 4 of the GPDO which would allow the use of the land for the stationing of a caravan for a 28 day period. Secondly it is contended that there are no other vehicles, items or other paraphernalia associated with the mixed use described in section 3 of the notice.

13. The requirements are aimed at the ceasing of the unauthorised mixed use. There has been a clear breach of planning control in my view and in order to remedy the breach I agree with the Council that it is necessary to cease the use of the land for the mixed use and to remove the mobile home from the site. This does not preclude the appellant from using a caravan or mobile home on the agricultural land under Class B part 4 of the Town and Country Planning (Permitted Development) (England) Order 2015 (GPDO).

14. On the second point and having considered all of the representations and inspected the site, I accept the contention that requirement No 3 is excessive. During my inspection I only noted typical agricultural items on the land around the mobile home. I shall, therefore omit the requirement from the notice and adjust

requirement 4 accordingly. The appeal on ground (f) succeeds, therefore, to this limited degree.

Other Matters

15. In reaching my conclusions I have taken into account all of the other matters raised by and on behalf of the appellants, by the Council and by interested persons. These include the planning history of the appeal land; the detailed grounds of appeal; the delegated report and the other details in the submitted statements. However, none of these carries sufficient weight to alter my conclusions on any the grounds of appeal with which I have dealt. Nor is any other matter of such significance so as to change my decision that the appeal should be dismissed and that the notice should be upheld as varied.

Formal decision

16. I direct that the notice be varied by deleting section 5.3 (WHAT YOU ARE REQUIRED TO DO) and amending section 5.4 by deleting '1-3' and substituting therefor, '1 and 2'.

17. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied.

Anthony J Wharton

Inspector