
Appeal Decision

Inquiry held on 16 May 2017

Site visit made on 16 May 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 07 June 2017

Appeal Ref: APP/W1145/C/16/3152967

Lydeland Water, Buckland Brewer, Bideford, Devon EX39 5NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mike Chambers against an enforcement notice issued by Torridge District Council.
- The enforcement notice was issued on 13 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a residential and storage use by the siting of a caravan for residential purposes as shown in Appendix 2 and the storage of additional caravans which are designed for residential purposes, as shown in photographs marked Appendix 3,4 & 6.
- The requirements of the notice are:
 - (i) cease using any part of the land for residential purposes
 - (ii) cease using the land for the siting/storage of caravans.
 - (iii) remove from the land all caravans, and any equipment brought onto the land of the purposes of residential use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b),(c),(d),(f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld with corrections and variations.

Background

1. The appeal site comprises about 15 acres and lies in open countryside. It appears that the appellant first took up residence in the field after he lost his home in about 1999. He occupied a caravan which he refers to as "the Paladium" and moved other chattels onto land.
2. The Council issued 2 Enforcement Notices in 2000 and following an appeal¹ these Notices were effectively combined by quashing one Notice while the remaining Notice (00/4) was upheld as corrected and varied² (the 2000 Notice). The requirements of the 2000 Notice are:
 - i) Remove all non-agricultural materials from the land including all vehicles and vehicle parts, building materials, wood, scrap metal, boats and household utensils; and

¹ Appeal references APP/W1145/C/00/1040640 (Enforcement Notice reference 00/4) and APP/W1145/C/00/1040641 (Enforcement Notice reference 00/3).

² Enforcement Notice reference 00/3 was quashed and the requirements of that Notice were incorporated into Enforcement Notice 00/4.

- ii) Stop using the caravan for residential purposes, and to remove the caravan from the land
3. Notwithstanding the 2000 Notice and subsequent prosecution the caravan then on site (as shown in Appendix 6 attached to the Notice before me) remains and it appears that it is currently occupied as the appellant's main home. I also saw that there are up to about 20 vehicles on the site in various states of disrepair, and a large quantity of materials; particularly recycled wood and other building materials, various sheds and domestic and agricultural items. Most of these are also in less than optimum condition. It appears to me that these items were the subject of the 2000 Notice but not of the Notice before me; accordingly, they form no part of my consideration of the subject appeal.
4. The situation on site is complex and the allegation is supported by 6 Appendices attached to the Notice. For the purposes of clarification, the following identifies the subjects of allegation.
 - (1) Appendix 1: Plan of land subject of the Notice.
 - (2) Appendix 2: Photograph of mobile home (static) agreed to have been brought onto the site in 2014. Presently unused.
 - (3) Appendix 3: Photograph (general view) showing caravans on the higher (northern) part of the site , including:
 - 2 'touring' vans comprising one close to the access used for domestic storage and one close to the mobile home which the appellant says will be used as an extension to that mobile home but is currently vacant/unused.
 - The Paladium (also shown in Appendix 6), and
 - The mobile home (static) (also shown in Appendix 2).
 - (4) Appendix 4: Close up of Appendix 3.
 - (5) Appendix 5: Two 'touring' vans in the lower part of the site (not shown in Appendices 3 and 4). Said to be historically in intermittent holiday use by family members but now unused.
 - (6) The Paladium, appellant's home and subject of 2000 Notice

A further 'touring caravan' is located in the north-east corner of the site but does not appear in any photograph or appendix attached to the Notice. This is also said to have been historically in intermittent holiday use by family members but it is now unused.
5. All evidence at the Inquiry was made on oath or by way of affirmation.

The appeal on Ground (b)

6. Under this ground of appeal the appellant must demonstrate that the alleged breach of planning control has not occurred as a matter of fact.
7. The appellant conceded that the mobile home as shown in Appendix 2 was on the site at the date of issue of the Notice (13 June 2016). However it appears, that it has not been used as part of the appellant's residential accommodation

to date³. I saw that the linking of the mobile home to The Paladium had not taken place at the date of my inspection and hence not at the date of issue of the Notice. Nevertheless there is no dispute that the mobile home is stored on the land.

8. As shown above in paragraph 4 there are 5 touring or 'additional caravans' on the land. The appellant said at the Inquiry that these were moved onto the site in about 2002. In his written evidence he said that three of the 'additional caravans' had been used intermittently by his 3 children for holidays. Of these, the 2 caravans shown in Appendix 5 are in poor condition and do not appear to have been used in the recent past as holiday accommodation. The third "holiday" caravan is stored in the north-east corner of the appeal site but this does not appear in the photographs and is not included in the allegation.
9. The remaining two caravans are the 'green'⁴ caravan close to the entrance to appeal site (in the north-west corner) and the caravan next to the mobile home; these are shown in Appendices 3 & 4. The green caravan is used for domestic storage and the touring van to the east of The Paladium has been stripped of most of its fittings and appears unused.
10. All the caravans photographed by the Council on 8 January 2015 were still on the site on the day of my visit in mid-May 2017. Consequently I conclude, on the balance of probabilities, that the mobile home (Appendix 2) and the 4 touring caravans subject of the Notice were stored on the land at the date the Notice was issued.
11. The terms of the 2000 Notice prevent lawful occupation of any single caravan for residential purposes. The evidence before me demonstrates, on the balance of probability, that residential use is limited to the occupation of a single caravan (at the date of the issue of this Notice that residential use was of the structure known by the appellant as The Paladium). In any event the 'mobile home' shown in Appendix 2 to the Notice and the additional touring caravans are simply stored on the land.
12. Section 176(1) of the Act⁵ says that on appeal the Secretary of State may correct or vary the Notice as long as this does not cause injustice to the parties. Case law has confirmed, *Hammersmith LB v SSE and Sandra* [1975] 30 P&CR 19, (*Hammersmith*) that there is a duty on an Inspector to "get the notice into order if he can". Thus in exercise of this power and in the light of *Hammersmith*, because there is no residential use other than that subject of the 2000 Notice, this use should be deleted from the allegation. Similarly the words 'designed for residential purposes' are superfluous. The allegation also needs to be corrected to refer to all the attached Appendices excluding Appendix 6.
13. Neither party would be prejudiced by these corrections as the purpose and extent of the Notice would be unchanged. Nor would these corrections affect the 2000 Notice which required the cessation of residential use in a caravan on the site.

³ It appears that Mr Chambers had told Council officers that he intended to 'extend' his residential accommodation by linking the mobile home to the Palladium.

⁴ This caravan looks blue on the photographs attached to the Notice but the parties agree that this is the caravan close to the main access in the north-west corner of the site.

⁵ Town and Country Planning Act 1990 as amended.

14. The evidence demonstrates that the use of the site for agriculture and for the siting/storage of caravans has occurred as a matter of fact. Accordingly the appeal on ground (b) fails.

The appeal on Ground (c)

15. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. As with Ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
16. The appellant's argument under this ground is firstly, that the mobile home (Appendix 2) is simply an extension to The Paladium and thus in itself does not need an express grant of planning permission. Secondly, in terms of the additional caravans he said that these are simply tourers and because they are on wheels and mobile he has permitted development rights to store them because they are ancillary to his dwelling house, the Paladium. Thirdly his liability to pay Council Tax means that the Council has accepted that there is already right to store the caravans on the land and a separate planning permission is not required. I address these arguments below in turn.
17. The 2000 Notice required the cessation of residential use and as noted above the removal of non-agricultural chattels. Consequently the siting and use of The Paladium (or any other single caravan on the site for residential purposes) is unlawful. It follows therefore that the 'extension' to this unauthorised structure does not benefit from any deemed permission. I shall return to this general premise below.
18. The term 'caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer⁶). It is agreed by the parties that The Paladium is a caravan, not a building, and I see no reasons to disagree. Consequently, although Mr Chambers appears to occupy The Paladium as his main home, it is not a building used as a dwellinghouse. It follows that the benefit of deemed permission which is granted by the General Permitted Development Order 2015 (as amended) (the GPDO) for alteration and extension to a dwellinghouse does not apply in this case. Therefore, even if the siting of The Paladium was considered to be lawful⁷, express planning permission would be required for any proposed extension to the caravan.
19. Secondly, Section 55(2)(d) of the Act says that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse is not development. Such a use of land could include the storing of a touring caravan. However the appellant does not benefit from that exemption to planning control, because the appeal site has no dwellinghouse and there is no such provision for uses incidental to the use of a caravan for residential purposes. In these circumstances the storage of several caravans on agricultural land amounts to a material change in the use of the land.
20. Thirdly, the liability for Council Tax is entirely separate from planning control. Thus registration of an address for Council Tax purposes does not convey

⁶ Interpretation of Part 1 of the Caravan Sites and Control of Development Act 1960 (as amended)

⁷ The 2000 Notice has not been withdrawn by the council and thus the siting of the Paladium remains unlawful.

planning permission which is subject to separate control under the Planning Acts.

21. Section 55(1) of the Act says that development includes the material change of use of any buildings or other land. In this case the change of use which has occurred as a matter of fact is a material change of use from agriculture to a mixed use for agriculture and the storage of caravans.
22. Section 57(1) says that planning permission is required for any development of land other than in respect of specified exceptions, none of which applies in this case. Section 171A (1)(a) of the Act says that the carrying out of development without the required planning permission constitutes a breach of planning control. Because no planning permission has been granted for the mixed use of agriculture and storage of caravans this change of use is a breach of planning control. Accordingly the appeal on Ground (c) fails.

The appeal on Ground (d)

23. This ground of appeal is that the development subject of the allegation is immune from enforcement action by reason of the passage of time. Section 171B of the Act says that in the case of any breach of planning control, other than exceptions that do not apply here, no enforcement action can be taken after the end of any period of ten years beginning with the date of the breach. The Notice was issued on 13 June 2016 and thus to be immune the latest date on which the breach of planning control could have occurred was 13 June 2006.
24. In his written evidence Mr Chambers says that The Paladium has been on the for appeal site for well over four years and by the time the 2000 Notice was issued it was lawful. However, that Notice was upheld at appeal and has come into effect and I cannot go behind that decision. In any event The Paladium is not subject of the Notice before me.
25. In terms of the mobile home, sited adjacent to The Paladium, the appellant said that this had been brought onto the land in 2014. The Council conceded that this date is likely to be correct. As matter of fact therefore, the mobile home shown in Appendix 2 had been on the site for about 2 years at the date the Notice was issued. This is substantially less than 10 years and thus this unit is not immune from enforcement action.
26. As regards the other caravans shown in Appendices 3-5 the written material provides little or no evidence about when these were brought onto the site. However Mr Chambers said, under oath, that these had been on the site since about 2002 but this claim was not backed up by any documentary evidence in terms of photographs, invoices or affidavits from, for example, his children who are said to have used the caravans for intermittent overnight stays or holidays. The Courts have held that the appellant's own evidence does not need to be corroborated, particularly if it is unchallenged, in order to be accepted⁸. But in an enforcement appeal the onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous. The test of the evidence is the balance of probabilities.
27. Although the Council had no direct counter evidence on this matter, the verbal evidence of Mr Chambers was vague and lacking in details. In the context of the lifestyle of the appellant that included time spent away from the site,

⁸ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

particularly prior to about 2010, and his variable knowledge or otherwise of the acquisition and storage of a considerable variety of vehicles and other paraphernalia on the site, I cannot conclude that his testimony was reliable and unambiguous.

28. Thus, bearing in mind the judgment in *Gabbitas*, I conclude on the balance of probability, that the evidence failed to demonstrate that the caravans shown in Appendices 3-5 have been on site for any period of 10 years or more by the date of the issue of the notice.

29. Consequently, for the reasons I have given, the appeal on Ground (d) fails.

The appeal on Ground (f)

30. An appeal on Ground (f) is usually where an appellant argues that the requirements of the Notice go beyond what is necessary or proportionate and lesser steps would suffice. In this case, because there is no ground (a) appeal and associated application for deemed planning permission, my decision cannot consider planning merits.

31. No lesser steps are proposed by the appellant. His sole arguments are that there should be no requirements because the Council, by dint of registering for Council Tax purposes his residential occupation of the appeal site, tacitly accept that residential use is lawful. Moreover, and in turn, any requirements would jeopardise his human rights.

32. I have noted above that the appellant is under a misapprehension about the effect of the Council registering the appeal site for the payment of Council Tax. However frustrating this may be for him, the aims and purpose of Council Tax and planning control are totally different, and operate under separate legislative regimes although they are both administered by the Council.

33. The 2000 Notice has been upheld at appeal and is now in force. Thus any continuing residential occupation of a caravan on the Land is unlawful. It appears that the Council has not taken any further steps to ensure compliance⁹ over the subsequent years. This is a matter for the Council as it has discretion under Section 173A(1)(b) of the Act and that is outside my jurisdiction. The Notice before me seeks to prevent any escalation of residential use and to prevent storage of caravans in the open countryside. I have found that residential use appears to be limited to The Paladium and remains unlawful while the other caravans shown in the Appendices attached to the Notice are simply stored on the land.

34. The appellant says that the requirements would interfere with his Human Rights although it is not clear which Article is relied upon. The Notice requires the removal of a number of caravans from the land and thus Article 1 (Protection of property) of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms could be engaged.

35. I have sympathy for the appellant's circumstances, and acknowledge that there are outstanding matters pursuant to the circumstances arising from the loss of his home in about 1999. However, this Notice as corrected solely seeks the removal of caravans stored on the site and would not result in Mr Chambers losing his home, because that is a matter already decided as a result of earlier

⁹ Despite successful action in the courts

action¹⁰. Nonetheless the storage of caravans harms the attractive open countryside and I conclude that in the light of national and local policies which seek to protect the countryside for the public good the requirements are necessary and proportionate.

36. Accordingly the appeal on ground(f) does not succeed.

37. There are consequential variations to the requirements because of the correction of the allegation. There is no need to require the cessation of residential use because there is no residential use (other than that unlawful use of a single caravan subject of the 2000 Notice). The requirements also need to be tied to storage of the caravans shown in the Appendices to the Notice. Notwithstanding this, Appendix 6 shows the caravan subject of the 2000 Notice and thus this does not need to be included.

The appeal on Ground (g)

38. The period for compliance is 6 months and the appellant seeks an extension to 12 months.

39. The justification for this, he says, is that it takes time to make arrangements for the removal and/or sale of the items stored on the land. He conceded that the appeal site looked like a 'random mess' and said that he was making strenuous efforts to tidy it up. Mr Chambers also said that he had recently made a planning application and that extra compliance time would allow for this to be determined by the Council.

40. On the other hand the Council says that a 6 month compliance period is sufficient for the appellant to find alternative accommodation. This appears to have limited relevance to the appeal before me because this is a matter that was determined in 2000, and the Notice then upheld remains in force.

41. In the light of the circumstances of this case, where the means of the appellant appear to be very limited, it seems that extending the compliance period to 9 months would be proportionate. This would also allow time for the determination of the pending planning application.

42. To this limited extent the appeal on ground (g) succeeds.

Conclusion and Formal Decision

43. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

44. It is directed that the enforcement notice be corrected by:

A. The deletion of section 3 in its entirety (the alleged breach of planning control) and replacement by the following:

"Without planning permission, the material change of use of the land from agriculture to a mixed use of agriculture and storage comprising the storage of caravans as shown in Appendices 2, 3, 4 & 5 attached to the Notice".

B. The variation of Section 5 as follows:

(a) The deletion of step (i) in its entirety

¹⁰ The 2000 Notice

- (b) The addition of the words "as shown in Appendices 2,3,4 & 5" after the word 'caravans' in step (ii)
 - (c) The addition of the words "as shown in Appendices 2,3,4 & 5" after the word caravans in step (iii) and the deletion of "and any equipment brought onto the land for the purposes of residential use."
 - C.** The variation of Section 6 by the substitution of "9 months" as the period for compliance in place of "6 months".
45. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Sukie Tamplin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mike Chambers

Appellant in person

FOR THE LOCAL PLANNING AUTHORITY:

Staci Dorey
She called

Solicitor, Torridge District Council
Nigel Marshall , Planning Enforcement Officer,
Torridge District Council