
Appeal Decision

Hearing held on 23 May 2017

Site visit made on 23 May 2017

by Nigel Burrows BA MRTPI

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

Decision date: 12 June 2017

Appeal Ref: APP/Z1510/C/16/3154026

Land known as The Slipe, Leather Lane, Great Yeldham, Essex, CO9 4JA

- 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 Michael Jack against an enforcement notice issued by Braintree District Council.
- The enforcement notice, ref: 16/00040/COU3, was issued on 7 June 2016.
- The breach of planning control as alleged in the notice is described as 'the material change in the use of the land from agriculture to a mixed use of agriculture and residential. The stationing of 1 touring caravan (marked 'A' on the attached plan), 1 static mobile home (marked 'B') both used in connection with a residential use of the site, 1 portacabin (marked 'C') and erection of a brick built structure shown in photo NR1, installation of hardstanding's [sic] in relation to the unauthorised structures.'
- The requirements of the notice are:-
 - a) Cease the use of the touring mobile home (Marked 'A') for residential purposes and remove the mobile home from the land.
 - b) Cease the use of the static mobile home (Marked 'B') for residential purposes and remove the static mobile home from the land.
 - c) Remove the portacabin (Marked 'C') from the land.
 - d) Demolish building (Marked 'D') and remove all resultant material from the land.
 - e) Demolish all associated hardstanding's [sic] and remove all resultant material from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d) and (f) 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 a variation

Procedural Matters

1. At the hearing it transpired the Council's letter to interested persons concerning the time, date and venue of the hearing had given less than 2-weeks notice as required by the regulations.¹ However, the main parties considered this had not caused any injustice to interested persons. I reached the same conclusion, given the fact that a number of local residents and interested persons were present in addition to the main parties. Consequently, I concluded the hearing could proceed without causing any injustice.
2. Turning to the enforcement notice, the Council's pre-hearing submissions suggested that 'an element of the hardstanding be removed from the enforcement notice'. The Council went further at the hearing and suggested the alleged breach of planning control should be corrected by deleting the reference to 'installation of hardstanding's [sic] in relation to the unauthorised structures.' The appellant indicated there was no objection to this correction and considered that it would not cause injustice. I intend to correct the notice accordingly. It will also be necessary to delete requirement 5 (e) of the notice in the interests of consistency.

¹ The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002

3. I also canvassed the need for additional corrections to the notice. The notice is entitled 'Material Change of Use' and is clearly attacking the use of the land. The immunity period cited in the reasons for issue should therefore be corrected to refer to the 10-year period. The 4-year period cited by the Council is correct in the case of operational development.
4. Requirement 5 (a) of the notice is also poorly worded, insofar as it refers to the 'touring mobile home'. I intend to substitute 'caravan' for 'mobile home'. It is also necessary to record here that the appellant has removed the unit, thereby complying with this requirement.
5. Overall, I am satisfied the notice can be corrected in the above respects without any injustice to the parties. In other respects, whilst the reasons for issuing the notice incorrectly state the site is outside the Development Boundary, no formal correction is required. The purpose of paragraph 4 of the notice, namely to inform the recipient of the objections to the development, has passed. In any event, there is no ground (a) appeal before me and the planning merits of any development do not fall to be considered.

The appeal on ground (b)

6. The issue under this ground is whether or not the breaches of planning control alleged in the enforcement notice have occurred as a matter of fact. The appellant's submissions address a wide range of matters, including criticisms of the Council's actions. However, it is apparent that the matters alleged in the enforcement notice have occurred. A touring caravan, mobile home and portacabin were placed upon the land. A brick-built structure was constructed near the mobile home. The alleged breaches of planning control have occurred as a matter of fact. The appellant appeared to concede the point at the Hearing.
7. It should also be borne in mind that the enforcement notice (as corrected) no longer attacks the hardstandings upon the site. In the circumstances, the appeal on ground (b) fails.

The appeal on ground (c)

8. The onus is firmly on the appellant under this ground to make out the case that there has not been a breach of planning control. In effect, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990, or the matters alleged in the notice do not require planning permission.
9. The appellant's stance is the portacabin and brick structure are used as temporary secure storage in connection with the maintenance of the land and growing of crops. The setting up of a portable building on land is generally regarded as a building operation for the purposes of section 55. There is persuasive evidence from a resident to indicate that the portacabin has been on site since April 2015. It is alleged that it was initially in residential use and subsequently re-used as ancillary storage. I observed the unit is currently used for the storage of various items including mowers, rotovators, tools, work clothing, a small quantity of straw and a quantity of residential 'bric-a-brac'. It contains a workbench, a washbasin and what appear to be the remnants of a kitchen. The erection of the brick-built structure also constitutes operational development for the purposes of section 55. I observed that it houses an electrical board/consumer box, a small quantity of straw and a trolley/wheelbarrow.
10. According to the appellant the static mobile home was intended to provide washing and changing facilities in connection with his activities upon the land. Nevertheless, he does not dispute that he has lived in the mobile home - albeit he claims that this was necessitated by his serious medical condition. In any event, it is evident that the appellant continues to live in the mobile home, together with his disabled son.
11. In terms of fact and degree, I conclude that a material change of use of the land has occurred as alleged in the enforcement notice. This constitutes development for the purposes of section 55 of the Act. It is evident that planning permission has not been granted for the mixed use of the land, or for the portacabin and the brick structure.

12. The appellant has not provided any firm or compelling evidence to demonstrate that planning permission is not required for the matters alleged in the notice, or to show that these matters fall within any category of 'permitted development'. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, I find that burden has not been satisfactorily discharged. The ground (c) appeal fails.

The appeal on ground (d)

13. The onus is on the appellant under this ground to make out the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The notice is directed at a material change of use of the land and operational development and the relevant immunity period is 10 years and 4 years respectively.
14. The appellant's ground (d) appeal appears to be mainly concerned with the hardstandings on the site. However, the notice, as corrected, no longer attacks any hardstandings. The appellant does not seek to argue that any of the other matters in the notice are immune from enforcement action through the passage of time. In any event, the evidence before me shows that they have occurred within a period of 10 years and 4 years respectively.
15. I therefore conclude that it was not too late for the Council to take action against the matters stated in the notice. I further conclude the ground (d) appeal should not succeed.

The appeal on ground (f)

16. The issue under the ground (f) appeal is whether the steps required by the enforcement 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.
17. The manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breaches of planning control in accordance with section 173(4)(a) of the Town and Country Planning Act 1990, by restoring the land to its condition before the breaches occurred.
18. As recorded above, the touring caravan has been removed. To that extent, the notice has been complied with. The appellant's stance appears to be that the mobile home and portacabin do not need to be removed from the site - they could be retained to provide washing and changing facilities and secure storage. It is also claimed this accommodation is temporary. However, at the hearing the appellant was unable to indicate when the accommodation would be removed. The brick structure is also claimed to be temporary. The appellant indicated this structure would be needed until such time as the adjacent garage was refurbished. However, there was no indication how long that would take.
19. In any event, I conclude on the balance of probability that the mobile home was brought onto the land for residential occupation. Consequently, its retention upon the land for some other purpose would not remedy the breach of planning control or satisfy the purpose in section 173(4)(a) of the Act. I further conclude the retention of the portacabin and brick structure would not address the purpose of the notice. Whilst the appellant considers there is a need for changing facilities and secure storage, there is no explanation why the refurbished garage could not fulfil this role. I saw there is also a timber structure nearby.²
20. I conclude the requirements of the notice are not unduly onerous. They do not exceed what is necessary to remedy the breaches of control. The appeal on ground (f) fails.

Other Considerations

21. The appellant has not lodged the appeal on ground (g) - the period given to comply with the notice is too short. However, the appellant informed the hearing that a period of at least 18 months would be required to comply with the requirements of the notice.

² Albeit the lawfulness of this structure is unclear

22. The Council previously decided to vary the period for compliance with the notice from 3 months to 12 months in recognition of the appellant's serious medical condition. The appellant was informed of this variation in July 2016. However, the appeal against the notice was subsequently lodged during November 2016, thereby suspending its effect.
23. The appellant indicates he is still under hospital supervision. I have also borne in mind that he occupies the mobile home with his disabled son. In the circumstances, I agree with the Council that a compliance period of 12 months would be a more proportionate and reasonable response to the various breaches of planning control that have occurred. This period would give the appellant more time to explore the options that might be available, without unnecessarily prolonging the adverse impact of the development attacked by the enforcement notice. I intend to vary the period for compliance with the notice to 12 months, thereby reflecting the variation previously agreed by the Council.

Overall Conclusions

24. For the reasons given above, I conclude the notice should be upheld, albeit with corrections and a variation. I have taken into account all the other matters raised, but find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

25. The enforcement notice is:-

- (i) Corrected by:-
 - (a) Deleting from paragraph 3 (THE BREACH OF PLANNING CONTROL ALLEGED) the following words: '*installation of hardstanding's [sic] in relation to the unauthorised structures*'.
 - (b) Deleting requirement 5 (e) of the notice and part (e) from TIME FOR COMPLIANCE.
 - (c) Inserting into the first sentence of paragraph 4, after the word '*last*', the words '*10 years and* '
 - (d) Substituting the word '*caravan*' for '*mobile home*' in the first line of requirement 5 (a) and '*touring caravan*' for '*mobile home*' in the second line.
- (ii) Varied by deleting '*3 months*' and substituting '*12 months*' as the period for compliance with requirements (a) to (d) inclusive of the notice.

26. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Nigel Burrows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Jack

FOR THE LOCAL PLANNING AUTHORITY:

Mrs N Robertson

Braintree District Council

Mrs F Bradley

As above

INTERESTED PERSONS:

Mrs C Rutter

Local Resident

Mr L Kidd

Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1 Council's letter dated 19 December 2016 giving notice of the appeal

Document 2 Council's letter dated 17 May 2017 confirming the hearing arrangements