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## Appeal Decision

Inquiry held on 23 May 2017

Site visit made on 23 May 2017

**by Mr K L Williams BA, MA, MRTPI**

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

**Decision date: 12 June 2017**

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**Appeal Ref: APP/F2605/C/16/3154031**

**Land adjoining Chase Farm and Fredericks Loke, Church Lane, Southburgh, Norfolk, IP25 7SU**

- 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 John Cole against an enforcement notice issued by Breckland Council.
- The Council's reference is ENF/114/16/PAR.
- The notice was issued on 26 May 2016.
- The breach of planning control as alleged in the notice is the material change of use of the land from land used for agriculture to a mixed use of land used for agriculture and use for the stationing and residential use of a caravan in the approximate position shown marked by an X on the plan attached to the notice.
- The requirements of the notice are to:
  - i. Permanently cease the residential use of the land.
  - ii. Permanently cease the use of the land for the stationing of a caravan.
  - iii. Permanently remove the caravan from the land.
  - iv. Permanently remove all items and associated infrastructure from the land used in connection with the residential use including the septic tank, associated pipework and other utility or service infrastructure installed or in the process of installation on the land.
  - v. Permanently remove the newly erected access gate and posts and reinstate the removed native hedgerow.
- The period for compliance with the requirements is 9 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be determined.

**Summary of Decision: The appeal does not succeed. The enforcement notice is corrected, varied and upheld.**

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### Preliminary Matters

1. Oral evidence was given at the Inquiry on oath or with a solemn affirmation. The application for an award of costs made by the Council is the subject of a separate decision.

### The Enforcement Notice and Related Matters

2. Matters concerning the enforcement notice were discussed at the Inquiry. The enforcement notice plan covers land to the north and south of Church Lane. The land to the north of the road is not in the appellant's ownership and the

notice can be corrected to exclude it. It would be more accurate and concise for the allegation to refer to the stationing of a caravan for residential purposes. This will allow a further correction to replace the first two requirements with a single requirement, that being to cease the use of the site for the stationing of a caravan for residential purposes. These corrections can be made as set out in the Formal Decision without injustice to the main parties.

3. In his grounds of appeal, Mr Cole questions whether it was expedient for the Council to take enforcement action in this case having regard to relevant guidance. However, the enforcement notice sets out in some detail the reasons for the Council taking action and the relevant local and national planning policies it considers have been infringed. The Council was entitled to conclude that it was expedient to take enforcement action. Although Mr Cole observes that the land has not been used for agriculture use for a long period, this does not preclude its lawful use as being agricultural. These matters do not render the notice invalid.

### **The Appeal on Ground (d)**

4. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the material change of use of the land as alleged is immune from enforcement action. The relevant period in respect of a material change of use of land is 10 years from the date of the breach of planning control. A period of 10 years prior to the issue of the enforcement notice began on 26 May 2006. It is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.
5. Mr Cole explains that the land was previously set-aside, was unattended for about 10 years and has not been in productive agricultural use for about 30 years. He asserts that the site has been his principal private residence since 1998. He is an author and has come and gone to and from the site as research for his books has required. He says that his mail was delivered to the appeal site and there was telephone and internet connection. He also says that his entire household effects that are not in use are in the container next to the caravan on the site.
6. There is substantive evidence which weighs against the appellant's version of events. Mr Storey is a local resident and lives about 180 metres from the appeal site. He says that the site has not been continuously occupied for a period of 10 years. He recalls a small touring caravan, a van and shipping container appearing on the site in around 2001 and a mobile home being placed on the land sometime after 2005. Over a long period there was occasional use of the mobile home but it was evident from the site's condition that no-one was living there. In 2009-2010 he needed to make contact with the site owner and went on to the land but found it unoccupied. He found out details of the owner, Mr Cole, and ascertained that he was living in Turkey.
7. In 2010 and 2011 there were planning applications concerning the residential development of the site, with no indication that Mr Cole was living on it. Mr Storey explains that these applications led to considerable local interest in what was occurring on the site. One application referred to a house being needed to enable Mr Cole to move back to the village, suggesting that he was not living there at that time. It was only by 2013/14 that concerns were being raised

locally that Mr Cole was living on the site for more than 28 days per year. This led to correspondence with the Council, which confirmed that site inspections had not revealed residential use. Occupation has been more frequent since mid-2016 when the new mobile home was installed. Mr Storey also cites an extract from a 2012 newspaper article on a book published by Mr Cole. It said that until recently Mr Cole had been living in Istanbul and then divided his time between Istanbul and Albania.

8. Mr Brown is chairman of Cranworth Parish Council and has also monitored the use of the site, particularly since the planning applications in 2010 and 2011. He says that Mr Cole has resided abroad until very recently, only coming to the site very occasionally for short periods to deal with medical or planning matters. Until recently there was no facility for mail delivery at the site and it went to a nearby resident. He has not observed residential occupation of the site until recently. Both Mr Storey and Mr Brown refer to frequently passing the site and being able to observe what was occurring.
9. For the Council, Mr Williamson explains that he visited the site in January 2016 and saw a static caravan. There was no indication of recent occupation or vehicular access onto the land. He visited again in April 2016. A new static caravan had replaced the earlier one and a new access had been created. Mr Cole informed him that he was about to leave the country again. Case notes by officers previously dealing with the site had not referred to residential use for more than 28 days a year. Council officers made a number of site visits during 2013 to 2014 which did not reveal evidence of ongoing residential use. In a telephone conversation in January 2014 Mr Cole's agent said that Mr Cole only using the caravan for the odd night but was mainly abroad. Previous planning applications in 2010 and 2011 did not allude to any ongoing residential use of the site and some described the site as field/scrub land. No Council Tax has been paid for a residential use and a letter of 19 July 2016 from Manor Farm Medical Centre gave an address in Swaffham for Mr Cole.
10. The Manor Farm Medical Centre letter does refer to Mr Cole currently living in a caravan and his explanation for its reference to a Swaffham address is credible. A polling card for the June 2017 parliamentary election gives the appeal site as his address. Nevertheless, Mr Cole provides no substantive documentary evidence or evidence from other witnesses to support his case for continuous residential use of the appeal site for the 10 year period before the notice was issued. His evidence is not precise on dates and periods of his occupation of the site. On the other hand, there is an extensive range of substantive evidence to contradict Mr Cole's position. On the balance of probabilities there has been only occasional residential occupation of the site and over short periods, with prolonged occupation only more recently. This pattern of use has not been sufficient to amount to a continuous residential use for the relevant 10 year period. I conclude that there is not immunity from enforcement action and the appeal should not succeed on ground (d).

## **The Appeal on Ground (a) and the Deemed Planning Application**

### *The Main Issues*

11. The deemed planning application concerns the material change of use of the site from agriculture to a mixed use of agriculture and the stationing of a caravan for residential purposes. The first main issue is the effect on the character and appearance of the area. The second main issue is whether this is

sustainable development having regard to matters including the site's accessibility to local services and facilities.

### *Relevant Planning Policies*

12. The National Planning Policy Framework (the Framework) is a material consideration. It is consistent with the Framework that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework itself. Some of the policies on which the Council relies are not fully consistent with Framework policies and I give them moderate weight in this appeal. Policy CP11 of the Council's Core Strategy and Development Control Policies, 2009 (CSDCP) deals with protection and enhancement of the environment. The thrust of this policy and of policy DC16 for a high quality of design is consistent with the Framework. However, policy CP11 refers to protecting the landscape for its own sake whereas Framework paragraph 58 requires development to respond to local character. The approach of policy CP14 to development in villages not identified for a specific level of growth does not fully reflect that of Framework paragraph 55 towards sustainable development in rural areas. Policy DC2 concerns housing development within defined settlement boundaries. This site is not within such a boundary so that the policy does not apply.

### *The Effect on the Character and Appearance of the Area*

13. South burgh is a small, rural settlement with no settlement boundary defined in the CSDCP. The site is an open, undeveloped field with a lawful agricultural use. It is at the western end of the settlement and contributes positively to the landscape setting of Southburgh. There is a reasonably consolidated group of dwellings to the east of the site but generally development in Southburgh is scattered, with the church a considerable distance to the east. The appeal site has agricultural land on three sides and the effect of the development would be to further extend the settlement on the south side of Church Lane.
14. Development of the site as a residential caravan site, with the domestic paraphernalia likely to accompany it and the upgrading of the access to meet an appropriated standard, would significantly change its appearance from agricultural land to that of a residential character. Nor would the development reflect local character or the design of dwellings which prevails in Southburgh. There are views into the site from part of Church Lane near the recently created entrance. There are also glimpsed views through the roadside hedge and they are likely to be greater when vegetation is not in leaf. If planning permission was granted planning conditions could be imposed, for example to control site access and layout and to require planting. Nevertheless, the overall effect would be one of material harm to the character and appearance of the surrounding area. The development would not be consistent with the spatial pattern of development set out in policy CP14 and would not meet the design quality requirements of policies CP11 and DC16. Nor is it consistent with Framework paragraph 55, which says that rural housing should be located where it will enhance or maintain the vitality of rural communities.

### *Sustainable Development*

15. The policies of the Framework support sustainable development, which has economic, social and environmental dimensions. Other than the church, there is a lack of local services or facilities within Southburgh. The nearby village of

Cranworth has a church, village hall and a fish shop. There are request bus stops near the site but services are very infrequent. Shipdham and Hingham are both about 5 km away and provide a range of services and facilities. The use of sustainable modes of transport such as walking and cycling would not be precluded. Nevertheless, it is very likely that most journeys to and from the site would be made by car. This weighs against the development, although I also take into account that a somewhat more flexible approach to accessibility in rural areas is consistent with the Framework paragraph 29.

16. Notwithstanding the dearth of local services, there is a group of dwellings nearby to the east. In that respect, this would not be an isolated new home in the countryside to which Framework paragraph 55 refers. With regard to the social dimension of sustainability, the development provides a single dwelling and a home for Mr Cole who asserts that he would be rendered homeless if this appeal fails. If the appeal is dismissed there would be an infringement of Mr Cole's human rights under Article 8 of the European Convention on Human Rights. It deals with the right to respect for family life and the home. The development would also result in a minor economic benefit arising from Mr Cole's expenditure in the local economy. Nevertheless, having regard to its overall effect, including that on the area's character and appearance and the site's remoteness from a range of services and facilities, I conclude that this would not amount to sustainable development.

#### *Other Matters*

17. The Council has submitted its Statement of Five Year Housing Land Supply (HLS), November 2016. Based on an Objectively Assessed Need and applying a 20% buffer, the Council calculates that there is a 5.2 or 5.6 year supply of deliverable housing sites, depending on the methodology adopted in respect of meeting its shortfall. Having regard to that document, while noting that it does not have legal force, Mr Cole acknowledges that HLS is not very relevant in this appeal. Although not entirely accepting the accuracy of the Council's document Mr Cole has provided no substantive evidence in this appeal to dispute the Council's position. This matter does not weigh in the appellant's favour.
18. Planning permission (3PL/2016/0122/F) for a single dwelling and garage was granted in September 2016 for a site in Garvestone. It was for a different form of development from that in this appeal. The scheme was judged acceptable having particular regard to Framework paragraph 55 and an exceptional or innovative quality of design. Those considerations do not apply in this appeal. There are personal medical circumstances in this case. Mr Cole is elderly. A doctor's letter refers to a serious medical condition and to the physical and mental stress likely to result from upheaval of Mr Cole's domestic situation.

#### *Conclusion on Ground (a) and the Deemed Planning Application*

19. If planning permission was granted it could be subject to a personal condition. Nevertheless, my conclusions on the main issues are not outweighed by the appellant's personal circumstances or by any other matters. The appeal should not succeed on ground (a) and planning permission should not be granted.

#### **The Appeal on Ground (f)**

20. The matters raised by Mr Cole under this ground have already been addressed above. They include the expediency of enforcement action, immunity from

enforcement, personal circumstances and the scope for further planting. The enforcement notice alleges an unauthorised material change of use of land. Its requirements include cessation of that unauthorised use, reinstatement of the removed hedgerow and removal of related items and operational development. The purpose of the notice is to remedy the breach of planning control. Its requirements do not exceed what is necessary to achieve that purpose. The appeal should not succeed on ground (f).

### **The Period for Compliance**

21. Although there was no appeal on ground (g), I appreciate that Mr Cole is not legally represented. When this matter was discussed at the Inquiry Mr Cole suggested an extended compliance period of 5 years. Such a long period would be disproportionate and akin to a lengthy temporary planning permission. However, Mr Cole is likely to lose his home and face considerable upheaval if the appeal is dismissed and there are personal medical circumstances to weigh in the balance. Extending the period for compliance would prolong the harm resulting from the development. Nevertheless, in all the circumstances a period for compliance of 9 calendar months is unreasonably short. The notice will be varied to allow a period of 15 calendar months for compliance.

### **Overall Conclusion**

22. Having regard to the above and to all other matters the appeal should not succeed. The notice should be corrected, varied and upheld. I am satisfied that the legitimate aim of protecting the environment cannot be achieved by means which are less interfering with the appellant's human rights than refusal of permanent planning permission combined with an extended period for compliance. This decision would be proportionate and necessary in all the circumstances. It would not result in a violation of rights under Article 8.

### **Formal Decision**

23. I direct that the notice be corrected as follows:

- i) At paragraph 3 by the replacement of the words "a mixed use of land used for agriculture and use for the stationing and residential use of a caravan" with the words "a mixed use of agriculture and the stationing of a caravan for residential purposes".
- ii) At paragraph 5 by the replacement of the first two requirements with a requirement to "Permanently cease the use of the land for the stationing of a caravan for residential purposes."
- iii) By the deletion on the enforcement notice plan of the land shown edged in red to the north of Church Lane.

24. I further direct that the notice be varied at paragraph 6 by the replacement of the words "9 calendar months" with "15 calendar months". I dismiss the appeal and uphold the enforcement notice as corrected and varied. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

*K Williams*

INSPECTOR

