
Appeal Decision

Site visit made on 16 May 2017

by **D E Morden MRTPI**

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

Decision date: 19 July 2017

Appeal Ref: APP/X1545/C/16/3142293

Bakers Nursery, Bakers Lane, Tolleshunt Major, Maldon, CM9 8JR

- 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 J Patrick against an enforcement notice issued by Maldon District Council.
- The enforcement notice reference ENF/13/00242, is dated 18 December 2015.
- The breach of planning control as alleged in the notice is the change of use of the land for the stationing of a caravan.
- The requirements of the notice are to (a) cease the change of use of the land for the stationing of a mobile home and (b) remove from the land the mobile home, brick footings, materials, debris and residential paraphernalia associated with the unauthorised use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice, subject to corrections and variations, is quashed as set out in the Formal Decision at paragraph 53 below.

Applications for costs

1. Applications for costs were made by Maldon District Council against the appellant and also by the appellant against the Council. These applications are the subject of a separate Decision.

Preliminary Matters

2. The Council confirmed, in response to my comment at the visit, that there was an error in the Enforcement Notice. Whilst two requirements are listed on the Notice, there is no heading '5. Requirements' which clearly ought to be there. Both parties included in their representations statements about the requirements and it is clear both understood the meaning of what was set out in the Notice. I will, therefore, make that correction and insert the appropriate sub heading as there would be no injustice to any party by me doing so.
3. Secondly, the allegation¹ in this instance is incorrect in principle. The Notice should have alleged a breach of condition 1 of the last temporary permission (FUL/MAL/09/00648 dated 9/11/2009) which required the use to cease after three years. The continuation of a use after the expiry of a planning permission granted for a limited period is not development.

¹ 1. As an aside an allegation of stationing a caravan on the land is meaningless in terms of an allegation of material change of use; it is the use to which the caravan is put (in this case residential use) that should form the allegation if this was a material change of use case.

4. Similarly the deemed planning application under s177(5), by analogy with s73A(3)(b), will, in such cases, be for the development originally permitted but without the condition, with effect from the day following the date when the limited period expired. This is a fairly common error on Notices and one that can usually be corrected without prejudice to any party. It is clear from the representations made that the parties' arguments submitted deal with the relevant issues between them on ground (a) – should it be necessary to deal with that ground of appeal.
5. Regarding grounds (b) and (d) in this appeal, the appellant's representations claiming that four years is the appropriate time period concerned are incorrect. The relevant period is ten years and that is the situation whether concerned with a notice alleging a breach of condition or a material change of use of the land to a residential caravan site. The appellant, therefore, is not prejudiced by me making that correction.
6. I will correct the Notice to reflect the actual contravention that should have been alleged. The use was disputed and I shall deal with that and representations about operational development under the ground (b) appeal. I shall deal in full with the appropriate time limits and the parties' representations on that under the ground (d) appeal.
7. As corrected the allegation will read: 'The stationing of a caravan² on the land used for residential purposes contrary to condition 1 of planning permission dated 9 November 2009 (FUL/MAL/09/00648)'. That condition stated as follows: *'The mobile home hereby permitted shall be removed and the land restored to its former condition in accordance with a scheme of work to be submitted to and approved in writing by the local planning authority on or before three years from the date of this permission unless before that date a formal planning application for the continuation of such use has been approved by the local planning authority.'*
8. The stated reason for the imposition of the condition was *'It is not considered that the grant of a permanent planning permission would be appropriate and a temporary permission would enable the local planning authority to re-assess the development of the site for agricultural purposes to establish whether there is a continued need for the stationing of a mobile home in the rural area at that time in accordance with policies CC14 and CC15 of the Adopted Maldon District Replacement Local Plan.'*
9. The other condition attached to the 2009 permission restricted the occupation to a person solely or mainly working in agriculture.
10. Thirdly, it may be necessary to make variations to the requirements as a consequence of correcting the decision and I shall do so in considering the ground (f) appeal (if necessary) or as a simple exercise to ensure the corrected notice makes sense if there is no ground (f) appeal to deal with.
11. Fourthly, and finally, regarding the notice, the plan was difficult to read, the green edging demarcating the site (and referred to in paragraph 2 of the Notice) being barely visible on any copy of the plan. For the avoidance of any

² Whilst referred to in the 2009 permission as a mobile home, what is on site is, by definition, a caravan and throughout this decision the term caravan is used rather than mobile home to avoid any confusion - except when quoting descriptions from earlier planning permissions or enforcement notices (the terms are synonymous when used in this decision).

doubt I will attach a plan to this decision showing the relevant land more clearly marked.

Background

12. The site has a fairly long history which is summarised below as it is relevant in considering the various grounds of appeal lodged. An application was refused in October 2004 (a renewal of a 1988 temporary permission) for the siting of a mobile home for residential purposes in connection with a nursery and smallholding. The 1988 temporary permission was renewed on a number of occasions (the 2007 application stated at least four times by then) over the next 18 or so years, each time with another temporary planning permission.
13. In August 2006 and October 2007 further temporary permissions were granted. An application in 2008 for the permanent siting of the mobile home and also for the renewal of the 2007 temporary permission was refused in February 2009 and a subsequent appeal against the decision was refused in December 2009. Prior to that, however, a three year temporary permission for the mobile home was approved by the Council in November 2009.
14. An application in 2012 to renew that November 2009 permission was refused in November 2012 as was an application for a permanent dwelling. A certificate of lawfulness (LDC) for the use of a mobile home as a permanent residence was refused in March 2014. A further LDC application for the permanent use of a mobile home as a permanent residence was appealed against (due to its non-determination) but this appeal was withdrawn in January 2016.
15. Finally an enforcement notice appeal was determined in March 2015 and the Notice was quashed (Ref: APP/X1545/C/14/2220203). It alleged '...operational development resulting in the conversion of a mobile home to a permanent dwelling and the construction of decking adjoining'. The decision is particularly relevant to this appeal; this Notice being served in the alternative form (alleging a material change of use but now corrected to breach of a condition) after the inspector quashed the Notice on the basis that the development was a use of land (siting of a residential caravan) rather than an operation. That case was decided following an Inquiry where the evidence was given on oath.
16. The appellant appealed on several grounds and relevant to the ground (b) and ground (d) appeals before me in this appeal were the representations and the findings/conclusions on grounds (b), (c) and (d) of that previous decision. The evidence at that inquiry was that cladding had been added to the caravan and the appellant accepted that it had been carried out less than four years prior to the Notice being issued. The appellant claimed that the decking around the caravan, most of the service connections and the brick skirt around the outside edge of and underneath the caravan were constructed more than four years before the issue of the Notice (that was in papers produced by the Council at the Inquiry).
17. The Council appeared to concede that the brickwork skirt around the caravan, the services and the decking had been there for more than four years as they were not referred to in its closing submissions on ground (d). Those submissions relied only on the fact that the cladding had resulted in the caravan being converted to a dwelling and that had taken place less than four years prior to the issue of the Notice. Despite issuing an operational development notice the Council also submitted in its closing submissions that

the caravan and features attached to it could be removed as they had facilitated the change of use. The inspector decided that the notice could not be corrected as different time periods applied to operational development and change of use and the appellant would have to produce different evidence on his ground (d) appeal.

18. The appellant's case at that appeal on ground (b) was that what was on site was a caravan, not a permanent dwelling. The inspector accepted after hearing all the evidence from both sides and inspecting what was on site that it was indeed a caravan as defined in the 1960 Act (as amended). The allegation was, therefore, wrong as a matter of fact, not correctable without prejudice and the Notice was quashed. On the ground (d) appeal it was concluded that the brick skirt around the base, the wooden decking and the septic tank were operational developments that were immune as they had been there more than four years and the appeal was successful on that ground on that limited point.

The appeal on Ground (b)

19. On this ground the appellant argued, on the basis of the allegation originally made, that there had been no material change of use; the site was a nursery (an agricultural use) and had been for many years; the residential caravan on the site was ancillary to that. It was claimed that had been a finding of fact in the previous appeal (at paragraph 4). Paragraphs 4 – 7 of that decision simply describe the appeal site and its surroundings; there is no conclusion there or indeed anywhere else in the decision that makes that finding. Whether on a farm or some other smaller agricultural enterprise, the permanent residential occupation of a dwelling or a caravan would not normally be incidental to an agricultural use.
20. As stated by the Council, the residential use could and would exist by itself if the agricultural use ceased; for that reason it cannot be ancillary to the primary (agricultural) use of the land. I acknowledge that the owner and operator of the agricultural use lives in the caravan but the residential use is a self-contained use and is not dependent on the agricultural use taking place for it to continue. That is the test of whether something can be considered to be a primary use and some other use ancillary to it. Clearly the residential use could be severed from the agricultural use and continue by itself.
21. In relation to the Notice as corrected, there is no dispute that the caravan is occupied and used as a dwelling. Further, it is not disputed that the Notice was issued less than 10 years after the expiry of the most recent temporary permission. In these circumstances the contravention has occurred as a matter of fact and the appeal on ground (b) must, therefore, fail.

The appeal on Ground (d)

22. On this ground the appellant stated, regarding the notice as originally issued, that the caravan had been on the site since 1988 and this was not disputed, nor the fact that it had always been occupied for residential purposes. The appellant referred to a four year time limit giving immunity from enforcement action; that is incorrect. Whether the notice concerns a breach of the time limiting condition (as now corrected) or a use of land (as originally issued), the correct time limit is 10 years. The four year time limit for a dwelling to gain immunity only applies to the use of a building, or part thereof, for that purpose. That is not the situation here.

23. There has been no period during which the Council could not have issued an enforcement notice; that can be done for a period of 10 years after a temporary permission expires (i.e., alleging the continuation of the use in breach of the time limiting condition). That ten year period starts again after the expiry of every temporary planning permission. In these circumstances the use of the land has only ever been lawful during the life of each of the temporary permissions. The current notice has been issued within 10 years of the 2009 permission expiring (in November 2012).
24. Even though the use may technically have been unlawful on occasions - if any of the renewals were not approved before previous temporary permissions expired - there is no ten year period identified when the use could have gained lawfulness due to the passage of time. The Council can issue a Notice right up to 8 November 2022 (i.e, ten years after the expiry of the most recent temporary permission) alleging a breach of the condition that required the use to cease at the specified date. The appeal on this ground therefore fails whether looking at the Notice as originally issued or as corrected.

The appeal on Ground (a)

Main Issues

25. I consider that the main issues in this case, having regard to the prevailing policies in the adopted Development Plan are, firstly, whether there is a need for the development that outweighs any harm caused to the rural character and appearance of the area and, secondly, whether the development represents sustainable development with reference to national and local planning policy and guidance.

Reasoning

26. Dealing with the first main issue, the Council stated that the site was in an isolated location and was intrusive and harmful to the rural character and appearance of the area. It was an incongruous development contrary to Policy S2 in the Maldon District Replacement Local Plan (RLP), adopted in 2005, which stated that the countryside outside settlements should be protected from this type of development. Further, Policy CC6 of the RLP stated that the natural beauty, tranquillity, amenity and traditional quality of the District's landscape should be protected, conserved and enhanced. The development was contrary to this.
27. The site is located outside of any settlement; the nearest part of Little Totham, a small hamlet of 70 or so dwellings, is about 250m to the north and it includes four or five dwellings fronting Bakers Lane on its west side. There is a new development of five dwellings fronting Sawyers Road opposite the junction with Bakers Lane but the developed area is mainly to the west of the junction. There are also two other dwellings on sizeable plots located one immediately either side of the appeal site. To the south the somewhat larger settlement of Tolleshunt Major is just over 450 metres away and eight dwellings including seven on the east side front Bakers Lane.
28. Bakers Lane itself is narrow with two cars barely able to pass each other, has fairly mature hedgerows along both sides as well as a good spread of mature trees. The site is readily visible whilst driving along the lane particularly when approaching from the north. Clearly in winter time there would not be the

same tree and hedgerow cover that was there at the time of my visit which would make the site and adjoining dwellings more visible to those passing by. The new entrance wall and solid gates stand out and appear somewhat harsh in the street scene but they are not part of the notice in front of me; they did, however, stop views into the site from that point when closed.

29. Whilst not a considerable distance from the two settlements north and south, I agree that the site is fairly isolated and visible. In my view it is harmful to the general rural character and appearance of the area which one sees when travelling along Bakers Lane.
30. The Council acknowledged that Policy CC14 of the RLP supported agricultural workers dwellings in the countryside if there was, amongst other criteria that need to be satisfied, a functional need for a dwelling on the enterprise and that the viability of the enterprise could support the additional accommodation. This policy is generally reiterated and updated in Policy H7 in the Maldon DC Local Development Plan (LP) which, at the time of the site visit, was only awaiting the inspector's final report as to its soundness. The earlier 'unsoundness' finding was only in relation to the policy regarding Gypsies and Travellers and as put forward by the Council, considerable weight should be afforded to the policies in the emerging LP.
31. The Council did not consider that any evidence had been put forward to satisfy these two particular criteria (no argument was made in respect of the other four criteria set out in the policy). In those circumstances, it argued, there could be no justification for permanent permission for a dwelling on this site when its viability has not been shown.
32. It was not disputed that the nursery use was an agricultural use and did not need permission as such and it had been on the site since 1988. Also, there had always been a residence (a caravan) occupied by whoever was running the nursery on the land since that time.
33. When the most recent three year temporary permission was granted in 2009, the relevant officers' report acknowledged that the appellant had invested considerable time and money into the enterprise, refurbishing many of the poly-tunnels to bring them back into production; transforming the car park area; erecting fences and walls within and around the holding and general clearing up of the site. There were, and still are, around 2000sqm of glass houses and poly-tunnels on the site. The rest of the land, however, has no outdoor growing taking place on it, and has not done so for many years; it is given over either to horse paddocks or a large landscaped garden area that has been created around the caravan.
34. At the time of that 2009 application the Council accepted that there was a functional need for someone to live at the site (para 6.14 of the officers' report) in order to deal with emergencies such as ensuring no frost damage occurred or the sorting out the failure of any automatic watering or ventilation systems. Most of the watering was done manually and there is no indication in the papers that that has changed. Manual watering was taking place in one of the buildings when I carried out the site visit.
35. The Council in 2009 were not certain, however, as to the financial viability of the enterprise based on the figures provided for 2006 and 2007 which did not include costs for either water or electricity. No further figures have been

- provided to indicate either the growth in the business projected by the appellant at the time or any costs now associated with the nursery. No accounts have been provided since the figures for 2006 and 2007 (and they were incomplete).
36. Certainly at my site visit there were many plants of varying sizes in the glasshouses/poly-tunnels and little unused space. Just a small part of one of the glass houses and poly-tunnels did not contain plants at the time of my visit – it housed a lot of equipment that had been housed in a now demolished storage building that had not been replaced due, the appellant stated, to the uncertainty over the site's future. There were clearly many more plants than the 2000 referred to in the 2009 officers' report.
37. There appears to have been no change since 2009 that would suggest that a functional need no longer exists for what seems the same business as was operating on the site then. The Council are concerned as to the viability of the enterprise and the possibility of a residence being there in the long term but not connected with an agricultural use of the land. Evidence of viability is required if the policy is to be satisfied (criterion 3 in Policy H7 of the LP; criterion (f) of the earlier RLP policy CC14). Nothing has been provided.
38. In my view, whilst unusual in most circumstances to grant a further temporary permission to the same person, such a permission would give the appellant an opportunity to provide the financial and other information that has so far not been forthcoming to show that the business has grown (as it appears to have done taking into account the appearance of the site and the number of plants that were there at my visit) and is financially viable. I appreciate that that may not be the answer that the appellant is seeking, however, the information that needed to be provided regarding his business to support a permanent permission simply has not been included in the appeal papers.
39. In conclusion on this issue I consider that the development is contrary to the relevant criteria of Policy CC14 of the RLP ((f) regarding viability) and to criterion 3 of Policy H7 in the emerging LP. As the development is harmful to the rural character and appearance of the area any functional need that may exist by itself does not, in my view, outweigh the lack of any viability evidence and also the harm caused due to its location.
40. Turning to the second main issue, the Council stated that the site is not in a sustainable location and as such the development would be contrary to its policies and national advice concerning such development. It was argued that the development failed in regard to the three dimensions of sustainable development as set out in the National Planning Policy Framework (NPPF); that is economic, social and environmental roles. The NPPF does promote sustainable development as the purpose of the planning system and states that there should be a presumption in favour of allowing such development.
41. I have already dealt with the environmental point in the first issue. The Council argued that in social and economic terms it would fail to support a strong vibrant and healthy community and as it has already commenced, the retention of the caravan would not support local trade. Further, there were no local shops or services that would benefit from its presence.
42. I acknowledge that it would be difficult for a small scale agricultural enterprise to appear to support a strong vibrant and healthy community but it does supply

plants to both local people and businesses. It also provides apprenticeships for students at Writtle College in Chelmsford (one of the foremost universities in the country for horticulture) although no details are provided as to frequency and numbers other than one letter from a student.

43. The business does provide a small local service and, to that extent, helps in a limited way to support the community in one of the few ways it can. I also concluded (dealing with the first main issue) that dismissing the appeal for environmental reasons is justified; it is in a fairly isolated location and visually intrusive. In my view the limited extent to which it satisfies some criteria of Policy S1 of the LP is not sufficient to say that it can be viewed as a sustainable development and it is, therefore, contrary to that policy.

Conclusion

44. In these circumstances the development should not be permitted unless there is a functional need and a viable enterprise and the information to show that has not been provided. Bearing in mind how long a nursery business has operated on this land (since 1988) albeit with several different owners and bearing in mind that the Council accepts that the current occupant has expended considerable time and money refurbishing the buildings and investing in the business a short temporary permission is, in my view, appropriate.
45. For the reasons given above I conclude that the appeal should succeed on ground (a) and that the enforcement notice, as corrected, should be quashed. The appeal on grounds (f) and (g) does not therefore fall to be considered.

Other matters

46. I have taken account of all other matters raised in the representations, including various decisions in other applications and appeals put to me but have found nothing of such significance as to outweigh the material planning considerations that have led to my conclusion. Whilst there is no appeal to deal with on grounds (f) or (g), my decision is not necessarily the final decision and it would be appropriate, therefore, to vary the requirements so that they properly reflect the corrected allegation and the decision reached by the last inspector about the lawfulness of some parts of the development.
47. The first requirement was to cease the change of use of the land for the stationing of a mobile home and that should require the cessation of the use and the removal of the residential caravan that is on the site. The second requirement stated that the caravan, brick footings, materials, debris and residential paraphernalia associated with the use should be removed.
48. The appellant suggested the requirements were incorrect and exceeded what was necessary but no lesser or alternative steps were put forward. I will vary the requirements to reflect the corrected allegation and what the last inspector determined was lawful.

Planning Conditions

49. The deemed planning application under s177(5), by analogy with s73A(3)(b) will be for the development originally permitted but without the time limiting condition. It is however, appropriate to attach whatever conditions are considered to be appropriate at this moment in time.

50. The 2009 permission included two conditions – one was the time limiting condition and the other was a condition that restricted the occupation to someone working, or mainly working in agriculture in the locality. The Council's reason stated that the occupancy condition was necessary as permission would not be granted for a home on the site unless it was connected with the agricultural use of the site or neighbouring land.
51. The reason for the occupancy condition is still relevant and permission would not be granted for any home in this location unless there was an agricultural functional need and I will impose a condition to that effect. As stated in paragraph 44 above, a condition requiring the cessation of the use and removal of the caravan from the land after a short temporary period is justified. The appellant has been on the site since 2006 (he produced partial accounts for 2006 and 2007 in 2009) and therefore, there ought to be figures from that time onward that could be submitted to the Council to show if (a) there is a functional need for a dwelling and (b) the business is viable.
52. They would need to be submitted with an application to either retain the caravan on site permanently or replace it with a permanent dwelling. In my view a period of 12 months would be sufficient to enable that to be undertaken and get a decision so I will attach such a condition.

Formal Decision

53. I direct that the enforcement notice is corrected as follows:
- (a) by the deletion of '(a)' in line two of paragraph 1 and the substitution therefor of '(b)';
 - (b) by the deletion of the words 'attached plan (Annex 2)' in paragraph 2 and the substitution therefor of 'plan attached to this decision';
 - (c) by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - (d) by the deletion of the words in paragraph three and the substitution of the words 'the stationing of a caravan on the land used for residential purposes contrary to condition 1 of planning permission dated 9 November 2009 (FUL/MAL/09/00648)';
 - (e) by the insertion after the end of paragraph 4 of the words '5. REQUIREMENTS OF THIS NOTICE'

I also direct that the enforcement notice is varied as follows:

- (f) by deleting the words in paragraph 5 a and the substitution therefor of the words 'Cease the residential use of the caravan stationed on the land';
- (g) by deleting the words in paragraph 5 b and the substitution therefor of the words 'Remove the caravan, any resulting materials and debris and any residential paraphernalia associated with the residential use of the caravan, from the land.'

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use of the land shown edged and hatched black on the plan annexed to this decision for the stationing of a residential caravan subject to the following conditions:

1. The occupation of the mobile home shall be limited to a person solely or mainly working or last working, in the locality, in agriculture as defined within the Town and Country Planning Act 1990 (as amended) or in forestry, or a widow or widower of such a person, and to any resident dependants;
2. The mobile home hereby permitted shall be removed from the site and the land restored to its previous condition within twelve months of the date of this decision.

D E Morden

INSPECTOR



Corrected Plan

This is the plan referred to in my decision dated: 19 July 2017

by **D E Morden MRTPI**

Land at: Bakers Nursery, Bakers Lane, Tolleshunt Major, Maldon, CM9 8JR

Reference: APP/X1545/C/16/3142293

Scale: Not to scale

