

Appeal Decisions

Hearing held on 9 May 2017

Site visit made on 9 May 2017

by Paul Dignan MSc PhD

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

Decision date: 19 July 2017

Appeal A: APP/R3325/C/16/3154414

Crimson Orchard, Top Road, Taunton, Somerset, TA3 6AW.

- 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 Carson against an enforcement notice issued by South Somerset District Council.
 - The enforcement notice, numbered 15/00197/COND, was issued on 15 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land to a mixed use of agriculture and residential by the siting and residential occupation of 2 mobile homes and a blue Mercedes Benz van registration number M416 BLU.
 - The requirements of the notice are: i) Cease the unauthorised residential use of the land; ii) Remove from the land all unauthorised mobile homes and the blue Mercedes Benz van being used for residential use; iii) Remove from the land any materials, vehicles, infrastructure and other residential paraphernalia associated with the siting of the unauthorised mobile homes and the van; and iv) Restore the land to its former condition before the unauthorised use took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (a) and (g) 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 considered.
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Appeal B: APP/R3325/W/16/3154205

Crimson Orchard, Top Road, Curry Mallet, Taunton, Somerset, TA3 6AW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Carson and Ms B Davies against the decision of South Somerset District Council.
 - The application Ref. 15/02218/FUL, dated 13 May 2015, was refused by notice dated 8 February 2016.
 - The development proposed is Change of use of land to provide 2 additional traveller pitches compromising 2 mobile homes, 2 touring caravans and associated hardstanding.
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Decisions

Appeal A

1. The enforcement notice is corrected: by the deletion, in Section 3, of the words "and a blue Mercedes Benz van registration number M416 BLU"; and varied by the deletion in Section 5(ii) of the words "and the blue Mercedes Benz van being used for residential use"; and by the deletion in Section 5(iii) of the words "and van". Subject to the correction and variations the appeal is allowed and the enforcement
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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 change of use of the land to a mixed use of agriculture and residential by the siting and residential occupation of 2 mobile homes on the land shown edged and hatched red on the plan attached to the notice, subject to the conditions set out in the schedule attached to this decision.

Appeal B

2. The appeal is allowed and planning permission is granted for Change of use of land to provide 2 additional traveller pitches comprising 2 mobile homes, 2 touring caravans and associated hardstanding at Crimson Orchard, Top Road, Curry Mallet, Taunton, Somerset, TA3 6AW in accordance with the terms of the application, Ref. 15/02218/FUL, dated 13 May 2015, and the plans submitted with it, subject to the conditions set out in the schedule attached to this decision.

Application for costs

3. At the Hearing an application for costs was made by Mr Carson and Ms Davies against South Somerset District Council. This application is the subject of a separate Decision.

Background

4. The appeals concern land at Crimson Orchard, on the north-west side of Top Road (also called Belmont Road), a rural lane. The land, which is about 1.5ha in total, is located in the countryside, the nearest settlement being Hatch Beauchamp about 1.6km away. Planning permission was granted in 2008¹ for "The use of land as a site for a mobile home to accommodate travelling family and the erection of two timber buildings to provide bedroom and composting toilet". The permission was subject to a condition limiting the use to Ms Davies and Mr Carson, the appellants in this case, and their dependents. The status of the appellants as travellers is cited in the decision notice. The permitted caravan site occupies the south-western corner of the land, and an agricultural barn, approved in 2011, has been erected just to the north-west. The two pitches the subject of these appeals occupy the north-west corner of the land beyond the barn.

Appeal A – ground (b)

5. An appeal on this ground is that the matters alleged in the notice have not occurred. This relates solely to the allegation of residential occupation of the specified blue Mercedes van. The van was apparently on the land on the last of the Council's site visits before the enforcement notice was issued, and although described as vacant it was seen to have a bed in the back, which the Council considered rendered it capable of being used for residential purposes. It had not been on the site at earlier visits.
6. The appellants claim that the van was only there for a short time and was never lived in, nor was there any intention to use it for residential purposes at the site. It has since been sold. I see no reason to dispute this version of events and I conclude accordingly that there was not siting and residential occupation of the van. The appeal on this ground succeeds to that extent and I shall correct the

¹ Council Ref. 07/01853/FUL

notice to remove reference to the van from the description of the breach of planning control and from the requirements.

Appeal A ground (a), the deemed planning application and Appeal B

7. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice. With the notice corrected to remove reference to the van, the alleged breach and the planning application deemed to have been made under section 177(5) are essentially the same as the development the subject of Appeal B, which sought retrospective planning permission for the development. The occupants of the caravans enforced against claim traveller status, by reference to the definition in Annex 1 of Planning Policy for Traveller Sites (PPTS), and the planning application was for a traveller site. What is sought under ground (a) is what was also sought in the planning application, that is a 2 pitch traveller site rather than a caravan site for unrestricted residential use, and I shall deal with that appeal on that basis.
8. On Appeal B, planning permission was refused for 2 reasons, one being a lack of detail about foul and surface water drainage arrangements. This was also a reason for issuing the enforcement notice. It is now agreed between the parties that this can be dealt with by condition, and hence this objection is not sustained.
9. The main issue then, based on the remaining reason for refusal is the effect of the development on the character and appearance of the rural area, and whether there are material considerations in favour of, or opposed to the appeals.
10. The development plan includes the recently adopted (March 2015) South Somerset Local Plan (2006-28) (LP). LP Policy HG7 undertakes to ensure that the accommodation needs of Travellers will be met by ensuring that they are accommodated in sustainable locations where essential services are available. It sets out criteria to guide the location of sites, including being reasonably well related to schools and other community facilities and avoiding significant adverse impacts on landscape character and visual amenity. LP Policy EQ2, which sets out general development principles in the interests of high quality design, is also relevant in that it seeks to ensure that the landscape character of the area is conserved or enhanced.
11. The site is in relatively open undulating countryside with mature roadside hedgerows, but the lie of the land and the presence of mature woodland along the western side of the site and a tall dense field hedgerow along the mobile homes means that the development itself is barely noticeable in views from outside the site. Even in winter it would be difficult to see the development from the public realm, and I doubt that development would have a significant visual impact. Further, if seen it would be in the context of a piece of land that already has a permitted mobile home on it, along with a relatively tall barn alongside, such that it would not appear discordant or incongruous.
12. The entrance to the site has a moderately domestic character, but that already serves the existing approved residential site, and nothing further is required for the additional accommodation. There is encroachment on agricultural land, and an intensification of the residential use of the holding, which serve to erode the intrinsic character of the countryside, but in LP Policy HG7 terms the harm is no more than would be expected from a traveller site in the countryside, which is clearly envisaged by that policy and by PPTS. Since the site is reasonably well

related to schools and other community facilities, and meets the other relevant LP Policy HG7 criteria, I am satisfied that the degree of countryside harm is not unacceptable and that the development therefore accords with LP Policy HG7. In this context I consider that the limited degree of countryside harm does not put the development at odds with the more general provisions of LP Policy EQ2. Overall, I am satisfied that the development accords with the development plan read as a whole.

13. The site has been occupied for some years without the appropriate planning permission and is clearly intentional unauthorised development to which some adverse weight must be attached. However, to set against this is the positive weight that arises from the provision of an authorised site for travellers where there are no identified available alternative sites, along with the benefits to the child living on the site whose interests are best served by the family having a settled base.
14. Whether or not the present occupants are *bone fide* travellers by reference to the PPTS Annex 1 definition was a matter raised by the Council and by neighbours. There have evidently been some periods when the occupants have not been actually travelling, but in the main this has been due to education or vocational training related to their means of earning a living, which has a significant and regular travelling component. Outside of those limited settled periods it is clear to me that the occupants have led, and continue to lead, a nomadic way of life directly connected with their way of earning a living, such that they fall within the PPTS Annex 1 definition.
15. I consider that the development accords with the development plan, read as a whole, and the balance of other material considerations also weighs in favour of a grant of planning permission. The site is already occupied, but the personal circumstances of the occupants have not tipped the balance, hence a condition limiting occupancy of the site to those meeting the planning definition of Travellers is appropriate. In the interests of the character and appearance of the site and surrounding area, to safeguard residential and visual amenity and for highway safety, I shall also impose a condition requiring the submission of a Site Development Scheme, covering the provision of a safe highway access, external lighting, surface water and foul sewage disposal, and landscaping and boundary treatments, including details of all trees to be retained on the site. For the same reasons I shall limit the number of pitches and the number of caravans on each pitch, preclude commercial activity, ensure satisfactory parking and remove certain permitted development rights. I shall also require that the development be carried out in accordance with the submitted plans, so far as they are relevant, for the avoidance of doubt.

Conclusion

16. Having considered all other matters raised, I conclude that planning permission should be granted. Appeal B succeeds and Appeal A succeeds on this ground, so the enforcement notice will be quashed and the appeal on ground (g) does not fall to be considered. Separate planning permissions will exist, but in practice they will be identical.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston	Ruston Planning
Rhodri Crandon	Landscape consultant, Tirlun Design Associates Ltd
Julia Thompson	occupant
Justin Wood	occupant
Harry Davies	occupant
Beky Davies	appellant
Jim Carson	appellant

FOR THE LOCAL PLANNING AUTHORITY:

Adrian Noon	Planning Officer
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INTERESTED PERSONS:

Godfrey Townrow	Curry Mallet Parish Council
Peter McKeown	Curry Mallet Parish Council
Alison Hill	Local resident
Kevin Hill	Local resident

DOCUMENTS

- 1 Signed Statement of Common Ground
- 2 Petition of support
- 3 School letters
- 4 Council's costs response

Schedule of Conditions – Appeals APP/R3325/C/16/3154414 and APP/R3325/W/16/3154205

- 1) The development hereby permitted shall be carried out in accordance with the following plans submitted with planning application Ref. 15/02218/FUL: 'Site Location Plan - drawing no. BJC15-SLP', received 14th May 2015, 'Site Layout Plan - drawing no. BJC15-LAYOUT Revision B', received 2nd June 2015 and 'VISIBILITY AND LANDSCAPING drawing no. BJC15-VSL', received 1st September 2015.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites*, or any subsequent revision or replacement.
- 3) There shall be no more than 2 pitches on the whole of the application site contained within the area outlined in red on the location plan submitted with planning application Ref. 15/02218/FUL, Drawing No. 'BJC15-SLP'. Each pitch shall be limited to the areas identified as 'Plot 1' and 'Plot 2' on submitted site layout plan, drawing no. 'BJC15-LAYOUT Revision B'. On each of the 2 pitches hereby approved, no more than 2 caravans shall be stationed at any time, of which no more than one caravan shall be a residential mobile home.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure; tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities, details of all trees to be retained, including measures for their protection; and details of the highway access, including the materials to be used and the provision and retention of visibility splays, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the Submitted Site Development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
- 5) No commercial activities, including the storage of materials, shall take place on the land.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings or structures shall be erected on site other than those expressly authorised by this permission.
- 7) The area identified as 'car park' on the site layout plan, Drawing No. 'BJC15-LAYOUT Revision B', shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted and that approved by planning permission 07/01853/FUL.