
Appeal Decision

Site visit made on 9 August 2017

by K R Seward Solicitor

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

Decision date: 16 August 2017

Appeal Ref: APP/Z3825/C/16/3159243

Land at Coolham Manor, Coolham Road, Coolham, Horsham RH13 8EQ

- 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 Michael Wells Corby against an enforcement notice issued by Horsham District Council.
 - The enforcement notice was issued on 29 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised stationing of a vehicle used for residential purposes on the approximate position marked with a red cross of the plan attached to the notice.
 - The requirements of the notice are:-
 - (a) permanently cease the residential occupation of the motor vehicle on the site.
 - (b) permanently remove the motor vehicle from the site.
 - The period for compliance with the requirements is 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b),(c),(d)&(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by insertion of the word "motor" before "vehicle" in paragraph 3. and deletion of the word "occupation" in paragraph 5.(a) and substitution therefor with "use".
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. In the original Appeal Form, text was inserted in the boxes for an appeal on grounds (a),(b),(c) and (f). The appellant subsequently confirmed that he does not seek planning permission under ground (a). In his submissions, the appellant says that the converted horsebox (described as a 'vehicle' in the notice) has been in the garden for several years. This indicates an appeal is being brought under ground (d) on the basis that its use is immune from enforcement action. The appeal proceeds on grounds (b),(c),(d) and (f).
4. Grounds (b),(c) and (d) are referred to as legal grounds of appeal. When making an appeal on legal grounds the burden of proof is on the appellant and the test of the evidence is the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, an appeal on legal grounds should be allowed.

5. In the absence of an appeal on ground (a) and payment of the prescribed fee, no consideration can be given to the planning merits of the vehicle. This includes arguments concerning the purpose of the vehicle and its occupation for security of the house following a spate of burglaries and attempts. Similarly, the absence of complaints is a matter that cannot influence my consideration of the appeal which must be decided on the application of the law and judicial authority to the facts.
6. The allegation is for the unauthorised stationing of a 'vehicle' for residential purposes whereas the requirements refer to a 'motor vehicle'. As a matter of good practice, the allegation and requirements should match. The Council has stated that both references should have been to a 'motor vehicle'. It was confirmed at my site visit that the converted horsebox still contains an engine. For consistency, the allegation should be corrected to refer to a 'motor vehicle' which is more specific.
7. The allegation is concerned with the material change of use of land. The notice should therefore at paragraph 5(a) require the residential "use" to cease rather than the residential "occupation".
8. Neither correction mentioned above affects the substance of the notice. As minor corrections they are capable of being made without injustice to either party.
9. The enforcement notice does not specify the relevant period for immunity from enforcement action as might be anticipated although there is no legislative requirement for it to do so. In its Appeal Statement the Council has correctly identified the time limit for taking enforcement action as 10 years as prescribed by section 171B(3) of the 1990 Act. A period of 4 years only applies if there is a change of use of a building to a single dwellinghouse (section 171B(2)). In this case, no building is involved. The appellant will have seen the Council's submissions and was afforded opportunity to respond. However, as the appellant was not informed of the relevant period at the outset, out of fairness, I gave the appellant further opportunity to add to his ground (d) appeal. The appellant has not therefore been misled or prejudiced by the lack of specific reference in the notice to the 10 year period in order for immunity from enforcement action to be gained.

Reasons

The appeal on ground (b)

10. This ground is that those matters alleged in the notice have not occurred. In order to succeed on this ground it would need to be demonstrated that a vehicle has not been stationed on the land for residential use, as alleged.
11. The appellant readily admits that a horsebox has been parked on his drive. There is no definition of 'vehicle' within the interpretation section of the 1990 Act¹, but it is commonly taken to mean something used for transporting people or goods especially on land. A horsebox is a form of vehicle.
12. It is located on the appeal site in the approximate position indicated on the plan. It may have been parked elsewhere, but there is no suggestion that it was anywhere other than on the driveway or that it was outside the appeal

¹ Section 336

site. At my site visit, the vehicle was in the approximate position identified on the enforcement notice plan.

13. It is the evidence of the neighbouring occupiers of No 1 Hunger Hill Cottages that the horsebox is used as a permanent residence. Following a request from the Council, it was moved further along the lane. Its original position and residential occupation is confirmed by the previous owner of No 1.
14. In his Grounds of Appeal the appellant says "Steve who lives in the box some of the time acts as security and patrols the grounds". There can be no doubt from this statement that the vehicle has been in use for residential purposes.
15. Indeed, at my site visit I was able to see that the horsebox is equipped with a cooker and hob, sink with worktop, a sofa, wall mounted television, sleeping area above the driver's cabin, plus a toilet and shower. Windows have been inserted in the sides, guttering affixed and the tailgate provides a verandah with a canopy above.
16. It is clear that the vehicle has all the facilities required for residential occupation.
17. I find as a matter of fact that those matters as alleged have occurred. The appeal on ground (b) fails.

The appeal on ground (c)

18. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
19. The onus is on the appellant under this ground of appeal 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 that planning permission is not required because, for example, it constitutes permitted development.
20. If the appellant has been misled by the Council over whether the vehicle needed planning permission then this may give cause for complaint to the Council. It will not help the appellant for the purposes of the ground (c) appeal and determining whether there has been a breach of planning control. Nor will it assist the appellant in establishing his case on ground (c) that a Council Officer asked for the horsebox to be moved further along the track to be nearer to the house and away from neighbouring residential dwellings.
21. Section 55(1) defines 'development' as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land".
22. In this instance, the issue is whether the residential use amounts to a material change in the use of land.
23. Coolham Manor is a substantial house occupying expansive grounds. The main driveway runs through pasture on each side and there are domestic gardens at the rear of the house. Another rear access runs broadly parallel with the main driveway. It is along this driveway that the converted horsebox is positioned.
24. The appellant says that he has had a number of horseboxes over the past

25 years which have been parked in a variety of locations along the drive. As there has been no material change in how or what has occurred over that time, the appellant considers there to have been no material change in use.

25. The duration of any breach is a matter pertinent to ground (d) rather than ground (c). The notice is not concerned with the parking of horseboxes, but the occupation of a horsebox/vehicle for residential use.
26. Section 55(2) provides that the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development. The stationing of a horsebox is a use of land. Its position along the rear driveway of the house may be viewed as within the curtilage albeit separated by considerable distance. However, the term 'incidental' refers to an activity not normally expected to be found as an integral part of the primary use. Where, as in this instance, the use is as primary living accommodation the use is not 'incidental'. Therefore, use of the vehicle is not excluded from being 'development' under section 55(2).
27. Furthermore, the vehicle is equipped with all the basic facilities required for independent living. Whilst the appellant says that Steve, the occupier, acts as security and patrols the grounds, there is no suggestion or evidence that his occupation of the vehicle is an extension of the residential use of the main house within the same planning unit.
28. As a matter of fact and degree, I find that the vehicle is in use as a separate unit of residential accommodation. Thus, the use of the vehicle for residential purposes is a material change of use of land amounting to 'development' within the meaning of section 55 of the Act.
29. I conclude as a matter of fact the breach, as alleged, has occurred and the appeal on ground (c) fails.

The appeal on ground (d)

30. In a ground (d) appeal, the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is the balance of probabilities. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action.
31. The appellant says that the vehicle has been parked in a number of spots along the drive "for possibly 5 years or more". His architect can apparently confirm this, but no evidence from the architect has been submitted. In any event, to succeed on this ground the appellant must demonstrate that, on the balance of probabilities, the change of use occurred at least 10 years prior to the date of the issue of the enforcement notice on 29 July 2016 and continued without material interruption for a period of 10 years after the date of such change.
32. The Council claims that the occupier verbally informed Officers in May 2016 that he had lived in the vehicle for about 2 years. The owners of No 1 Hunger Hill Cottages say the vehicle was parked in the side lane at the end of their garden when they purchased their property in October 2015. The previous owner of that property states (in February 2017) that the horsebox arrived "over 3 years ago" and that in her 31 years of occupation at no time was there a horsebox in this position until this one arrived.

33. The appellant himself does not claim in excess of 10 years use. There is no evidence that the residential use of the vehicle has approached anywhere near that duration.

34. The appeal on ground (d) must fail.

The appeal on ground (f)

35. The ground of appeal is that the steps required by the notice to be taken are excessive.

36. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

37. The Council does not expressly identify which of these purposes it seeks to achieve. Nonetheless, the requirement to permanently remove the vehicle from the site is consistent with an intention to remedy the breach. The reasons for issuing the enforcement notice also refer to the harmful effects upon the countryside location and detriment to the rural character of the area. This concerns injury to amenity. The notice is therefore directed towards both purposes in section 173(4)(a) and (b).

38. No lesser steps have been identified and given that the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive.

39. The appeal on ground (f) fails.

Conclusion

40. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

KR Seward

INSPECTOR