
Appeal Decision

Site visit made on 4 April 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2018

Appeal Ref: APP/A2525/C/17/3180349

Land at Sutton Road / Ropers Lane / Broadgate junction, Sutton St James, Spalding, Lincolnshire PE12 0HS

- 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 Anthony Raymond Timbrell against an enforcement notice issued by South Holland District Council.
- The enforcement notice was issued on 13 June 2017.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Land from the authorised use as a paddock, to a mixed use of paddock land and residential by the siting of a static caravan and associated unauthorised erection of a kennel block building.
- The requirements of the notice are i) Cease the unauthorised residential use of any part of the land; ii) Remove the static caravan from the Land and all paraphernalia associated with the unauthorised residential use and iii) Remove the unauthorised kennel block building and all associated material resulting from the building's removal.
- The period for compliance with the requirements is within 6 months.
- The appeal is made on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Procedural Matters

1. The Appellant has sought to introduce a ground (b) appeal in pursuit of the claim that the use of the Land includes the rehoming and rehabilitation of greyhounds, but the Council has now accepted that such a mixed use has occurred. With these considerations in mind, whilst there is no evidence to suggest that greyhound breeding is occurring, I am satisfied that there is a mixed use taking place on the site, comprising both residential and the use of land for the rehabilitation and re-homing of greyhounds. I am also satisfied that it is possible for me to correct the notice accordingly without causing injustice to the Council or the appellant, because the opportunity has been available to both parties to make representations about the use of the site. Given the broad consensus on this matter there is no need for me to deal formally with a ground (b) appeal.
2. There is no dispute that before the existing caravan was in place, a different caravan was present on the site. However there is no evidence to support any claim that a caravan has been lived in on the land for a period of more than 10 years before the date of issue of the notice. In these circumstances I propose

to deal with this appeal on the basis of the single ground of appeal that has been lodged.

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

Main Issues

3. The main issues are i) whether there is an essential need for residential presence on the site; ii) whether residential use of the site would benefit from acceptable access to services; iii) whether the use of the site for the rehabilitation and rehoming of greyhounds is acceptable in this location and iv) the effect of the development on the character and appearance of the area.

Reasons

Essential Need

4. Policies SG1, SG2, SG4 and HS7 of the South Holland Local Plan 2006 (LP) are concerned with the Council's development strategy. Policy SG1 requires consistency with the principles of sustainable development including that South Holland's essential character is not harmed. Policy SG2 requires, amongst other things, that wherever possible development is served by a choice of transport modes. Policy SG4 seeks to restrict development outside the defined settlement limits to that which has an essential requirement for such a location. Policy HS7 in particular seeks to limit new housing development outside the settlement limits to, amongst other things, those cases where it would be essential to meet the needs of agricultural, forestry or other workers.
5. The Council state that the appeal site is outside the settlement limit of the nearby village of Sutton St James. The appellant has not provided any evidence to contradict this. The site is therefore one where, to accord with the aforementioned policies, new residential development would need to be based on an essential need. The appellant's statement and supplementary comments indicate that his work involves the training and resettling of retired greyhounds; that this is a full time job and an income is derived from this. During my visit to the site, I inspected the kennel block and noted that provision had been made for the keeping of several dogs there; that a purposely designed kitchen area to allow for food preparation and medical care of the animals had also been incorporated; that external penning arrangements for the dogs had been allowed for at the rear of the kennels and that the former stable building had been internally adapted to allow for additional kennelling.
6. It seems to me that this provides evidence of financial commitment and a genuine intent to plan for the aforementioned greyhound use. If the use were to be established on this site, then there might be an essential need for a residential presence in the interests of the care and security of the animals. In such circumstances the use might meet the exceptions for residential development outside defined settlement limits in accordance with Policies SG4 and HS7 of the LP.
7. However I am unable to reach this view in the absence of adequate supporting information having been provided by the appellant. There is no business plan setting out the proposed scale of development; and details of income and expenditure (including that which may be derived from shares in a greyhound food distribution company), to demonstrate that a sustainable business is being

run from the site which might provide a lasting source of work. Furthermore despite the claim that the appellant's licence for greyhounds is based on a 24 hour residency, I have not been provided with evidence of this documentation.

8. Accordingly, on the basis of the limited information before me, I am not satisfied that it has been demonstrated that residential development on the site would meet the aforementioned policy exception. Furthermore the siting of the caravan for residential purposes would, in its own right, be in conflict with Policies SG4 and HS7 of the LP.

Access to Services

9. The Council has conceded that at this time it is unable to demonstrate a five year supply of deliverable housing land. On that basis, in line with paragraphs 49 and 14 of the National Planning Policy Framework (the Framework), the Council's relevant policies for the supply of housing should not be considered up to date. It is therefore necessary for the proposal to be considered in the context of the approach set out in the Framework, of a presumption in favour of sustainable development unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.
10. In terms of promoting sustainable development in rural areas, the Framework is clear that housing should be located where it will enhance or maintain the vitality of rural communities. It goes on to state that new isolated homes in the countryside should be avoided unless there are special circumstances. It is therefore necessary to consider whether the caravan would represent an isolated home and, if so, whether harm would arise from this.
11. The site is surrounded by open fields, with other residential properties sporadically dispersed over the wider area. The caravan and associated kennel block do not extend or infill the established built up part of the nearby settlement. Whilst the development is not visually isolated in the sense of being hidden or secluded, the prevailing character of the area is one of open countryside. It seems to me that, on balance, the appeal site would still have the sense of being in a physically isolated location in terms of its relationship to other buildings.
12. Whilst it would be unrealistic to expect that residents could avoid use of private cars in this rural location, Sutton St James, though relatively nearby, offers only a very limited range of services. Furthermore the absence of footways and lighting between the site and the village would not be conducive to safe and convenient access for pedestrians. Despite the possibility of some reliance on online shopping, there is no information before me that leads me to conclude that a genuine sustainable transport choice would be available to allow for convenient access to a range of day to day essential services and facilities. I therefore conclude that a residential use in its own right would not have acceptable access in this regard and that there would be a lack of relationship between the site and the nearest settlement. In this respect the dwelling would be functionally isolated. It would therefore be at odds with Policy SG2 of the LP insofar as it is concerned with promoting transport choice.
13. Drawing the above considerations together I find that the appeal site is both physically and functionally isolated. The development should not therefore be

regarded as garnering support from the recognition within paragraph 55 of the Framework that development in one village may support services in a village nearby. Even though the provision of accommodation on site would obviate the need to travel to work, I conclude that because of a lack of detailed information about the business, as discussed above, special circumstances have not been satisfactorily demonstrated by the appellant that would necessitate the siting of a dwelling in this location. There would therefore be conflict with the Framework.

14. The appellant has referred to planning permission being granted by the Council for residential development on land to the east of the village, outside the settlement boundary. However I have not been provided with any details of that case and consequently there is uncertainty as to the circumstances that gave rise to that planning consent. It cannot therefore be said that that permission weighs in favour of granting planning permission in this case.

Greyhound Use

15. The Council has also set out that the greyhound related use of the site would be unacceptable due to what it considers to be an unsustainable location. The appellant's view, however, is that this is an appropriate location for the use given the availability of space, security and the separation of the site from other residents.
16. It was apparent from my visit that provision had been made within the kennel and converted stable buildings for some 13 separate pens. Whilst several dogs could therefore be accommodated, when considering the overall scale of the site, it seems to me that this represents a relatively low key development with plenty of space for greyhounds to be exercised externally.
17. The development could be satisfactorily controlled because any expansion of facilities there, to accommodate more dogs, would require a separate planning permission. Furthermore the limited scale of existing development would serve to naturally constrain the number of comings and goings of visitors and also, whilst taking into account the relative separation of the site from large numbers of residents, the potential for any noise related disturbance. Whilst I accept that the use would be likely to generate car journeys in connection with visits to the site, I am in no doubt that this would be preferable to the use subsisting in close proximity to large numbers of residents with potential for disturbance and harm to living conditions. In addition I am mindful that noise disturbance was not a reason given by the Council for instigating enforcement proceedings.
18. It is evident from the Framework that safeguarding the living conditions of residents and promoting sustainable travel choice are both important aspects of sustainable development. Drawing the above considerations together, on balance, I concur with the appellant that the site is an appropriate location for the rehabilitation and re-homing of greyhounds. Accordingly the proposed use would conform with Policies SG1 and SG4 of the LP insofar as they seek to secure sustainable development and restrict development outside the defined settlement limits to that which has an essential requirement for such a location. There is therefore justification to grant planning permission for this element of the use of the site.

Character and Appearance

19. The Framework recognises the intrinsic character and beauty of the countryside as a core planning principle. In terms of appearance the static caravan is functional in design and because of its light coloured shell, is very prominent from various locations in the wider open landscape including from Sutton Road immediately to the north, from the bridleway adjacent to the South Holland Drain further to the north and from Ropers Lane to the south. The prominent functional design of the caravan appears incongruous with the rural character of its surroundings. Whilst I noted during my visit that the appellant has sought to establish some boundary planting, this would take considerable time to become established and to afford any screening benefits.
20. The appellant also states that it is proposed to apply timber cladding to the caravan so as to match the kennel block. Whilst this would serve to reduce the prominence of the caravan, I am not persuaded that it would alleviate its functional design. The caravan therefore results in harm to the character and appearance of the area, and would not be suitable as a permanent feature on the site, which would be at odds with the Framework. It also means that the development would be in conflict with Policy SG1 of the LP insofar as it seeks to protect the character of the area.
21. In terms of the kennel block building cited in the Notice, it was apparent from my visit that its limited scale, use of dark coloured timber cladding over blockwork, albeit that this is incomplete, and siting adjoining the existing authorised, similarly designed, stable building serves to give the structure a recessive appearance. Accordingly this building does not appear obtrusive and is well assimilated into the surrounding landscape. It would accord with the Framework and Policy SG1 of the LP.

Conditions

22. There have been no conditions suggested in the event of the appeal being allowed. Planning permission will be granted for the greyhound related use of the site including the kennel building. As I have explained earlier in my decision I am satisfied that because of the limited scale of the development, no planning conditions are specifically required in connection with the use. I am also satisfied that the cladding of the kennel building has sufficiently progressed to persuade me that this work would be completed.

Conclusion

23. The local plan policies with which I have found a conflict are consistent with the Framework insofar as they seek to avoid harm to the visual amenity of the countryside and to resist new isolated dwellings there unless special circumstances exist, which would include an essential need for a rural worker to live at or near their place of work. Because of this the policy conflict should be given significant weight.
24. Balanced against this the contribution to the supply of housing would be extremely limited and accordingly I afford this only moderate weight. Though it is undisputed that a caravan was previously placed on the site and has been removed, and despite my finding that the greyhound use in its own right is acceptable, I have not been provided with sufficient information to persuade

me that that use would be enduring and would justify the retention of the present caravan for residential use.

25. Taking all of the above into account, I consider that the adverse impacts of granting planning permission for residential use, under the present circumstances, would significantly and demonstrably outweigh the benefits. As a result the application of paragraph 14 of the Framework does not indicate that permission should be granted for this use of the site. The presumption in favour of sustainable development does not apply in this regard.
26. However because there is uncertainty over whether a sustainable business is being developed on the site, and despite the absence of an appeal under ground (g), I am persuaded that there would be justification to lengthen the time for compliance with the enforcement notice from 6 months to 12 months. I consider that this would provide a reasonable opportunity for the appellant to make a retrospective planning application to the Council for residential use, should it be possible to make a work related case. In the alternative, I consider it would allow reasonable time for the appellant to find different living accommodation, including arrangements for any dogs present on the site, should this be necessary.
27. I recognise that the loss of residential use of the site would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country which has been held to include the protection of the environment and upholding planning policies. In this case I have found the residential development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, whilst taking into account a variation to the enforcement notice to allow for a significantly extended compliance period, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and would not be disproportionate.
28. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part.

Formal Decision

29. It is directed that the enforcement notice be corrected by:

- 1) deleting the words in paragraph 3 "...to a mixed use of paddock land and residential by the siting of a static caravan and associated unauthorised erection of a kennel block building..."; and
- 2) substituting the words "...to a mixed use of paddock land and residential by the siting of a static caravan and use for the rehabilitation and re-homing of greyhounds with associated unauthorised erection of a kennel block building..."; and
- 3) inserting the words in paragraph 5 "ii) Cease the unauthorised use of any part of the Land for the rehabilitation and re-homing of greyhounds"; and

4) amending clauses "ii)" and "iii)" to read as "iii)" and "iv)" respectively

and the appeal is allowed insofar as it relates to the land shown edged red on the plan annexed to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for use as paddock land and for the rehabilitation and re-homing of greyhounds with associated unauthorised erection of a kennel block building at Land at Sutton Road / Ropers Lane / Broadgate junction, Sutton St James, Spalding, Lincolnshire PE12 0HS.

It is directed that the enforcement notice be varied by the deletion of the figure "6" in paragraph 6 of the enforcement notice and substituting the figure "12".

The appeal is dismissed and the enforcement notice is upheld as corrected and varied, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended in respect of residential use by the siting of a static caravan at Land at Sutton Road / Ropers Lane / Broadgate junction, Sutton St James, Spalding, Lincolnshire PE12 0HS.

Roy Merrett

INSPECTOR