



Appeal Decision

Inquiry Held on 18 & 19 July 2018

Site visit made on 19 July 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 29 October 2018

Appeal Ref: APP/B1415/C/17/3181116

Land known as the Strip of Land to the south-west of Mill Farm, Mill Lane, Hastings TN35 5DP

- 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 by Gary Bailey against an enforcement notice issued by Hastings Borough Council.
 - The enforcement notice, ref. EN/17/00052, was issued on 29 June 2017.
 - The breaches of planning control alleged in the notice are:

The use of any part of the land for the siting of a caravan for holiday accommodation for a period of less than 10 years, without planning permission; and,

Incidental to the unauthorised use of the land for holiday accommodation or otherwise, the placement of a mobile home, the construction of a hardstanding and the formation of a foul/waste water drainage system for a period of less than 10 years without planning permission.
 - The requirements of the notice are to:
 - (i) Remove the mobile home.
 - (ii) Remove the hard standing.
 - (iii) Remove waste water connection pipes and any other soakaway or underground container associated with the disposal of foul/waste water.
 - (iv) Cease use of any part of the site for holiday accommodation.
 - (v) Return the land to its former state prior to works noted at Section 3 – that is, the works alleged to be in breach of planning control.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
-

Decision

1. It is directed that the enforcement notice be varied by:

OMISSION of the words '*and any other soakaway or underground container*' from Requirement (iii) of the enforcement notice.

Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Inquiry

2. Evidence at the Inquiry was taken under oath or solemn affirmation.

Preliminary matters

3. The appellant argued that the alleged installation of the foul/waste water drainage system does not reflect what actually exists, and that it is therefore excessive to require its removal. This is effectively an appeal under ground (f), and I have considered it as if such an appeal had been made.
4. The appellant also argues that in the event of failure on ground (a), then use of the land could revert to a previous lawful use for caravan storage. This is raised under the ground (a) appeal. However, ground (a) and the deemed planning application are for consideration of whether permission should be granted for the matters stated in the notice to be in breach of planning control. The argument in this instance is for making use of a claimed fall-back position, and is more properly considered under ground (f).

Background matters

5. The appeal site lies off the eastern side of Mill Lane, an unmade track, and is some 5 kilometres to the north-east of the centre of Hastings. It is within the High Weald Area of Outstanding Natural Beauty. The buildings of Mill Farm are immediately to the north-east, but there is virtually no other built development nearby.
6. There is a dense belt of trees and undergrowth about 5 metres wide along the western side of the site – outside the appellant's ownership – largely screening it from the lane. Access from the lane is via a side track, which also serves a meadow to the east, and in through the northern boundary of the site, where a close boarded timber fence and gates on concrete posts has been erected – clearly quite recently. On the eastern boundary is a post and wire fence, and the land slopes away to the fields beyond.
7. There is an approximately 11 metre long mobile home positioned across the southern end of the site, supported on concrete slabs, and I saw a touring caravan with awning near the western site boundary, as well as a portable WC. Also on the site were a picnic table, a wrought iron table and chairs, a hammock on a frame, various log-burners, a lawn mower and shredder under a tarpaulin, a toy tractor and trailer, as well as stacks of timber, concrete pavers, and a dismantled steel car-port. A refuse skip stood immediately outside the close-boarded fence, but on the appellant's land. The site has a mains water supply from a stand-pipe.
8. The mobile home has been stripped of much of its interior – there is for instance no kitchen – and there is a badly broken window. It is clearly not in a usable state, and I was told that it had been stripped out preparatory to refurbishment.

9. I note that in 2015 planning permission was refused for the erection on the appeal site of a 3-bedroom chalet bungalow with a detached double garage¹.

The enforcement notice

10. The appellant argues that the allegation in the enforcement notice is insufficiently precise in that it refers to 'any part of the land'. He therefore cannot know whether it is alleged that a particular part has been used, or the entirety of the land, as one planning unit. As a result, the scope of what needs to be demonstrated under ground (d) cannot be clear, nor can it be clear for what planning permission might be granted in the event of success in the ground (a) appeal and deemed planning application.
11. I consider that the description of the use of 'any part of the land' covers the entire site. This is as opposed to a description of the use of 'part of the land', which would imply a specific part, and without further definition would have been imprecise. As the appellant has stated, the large caravan remains movable and is not a permanent fixture on a particular part of the site. In my view the description quite properly deals with the situation in which the caravan might be moved from one place to another within the site boundaries.
12. Furthermore, it is argued the use of the phrase 'or otherwise' in the second part of the allegation implies there may be a suite of allegations as alternatives to that in the first part. However, this second part of the allegation clearly refers to the operational development carried out to facilitate the alleged material change of use. On the appellant's own case, there might be a fall-back position of the lawful use of the site for the storage of caravans, and it is therefore acknowledged that at least one (claimed) alternative exists. It is also conceivable that it is found that no lawful use of the site has been established, in which case the operational development would still need to be considered, albeit in different terms. I do not consider the notice lacks precision to any degree that causes injustice to the appellant.

The appeal on ground (d)

13. This ground is that the alleged development is immune from enforcement action as a result of the passage of time. The burden of proof is on the appellant to show that, on the balance of probabilities the siting of the caravan for holiday accommodation has taken place continuously for a period of 10 or more years prior to issue of the enforcement notice on 29 June 2017.
14. Furthermore, the courts have held that the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify success on the balance of probability.
15. The appellant had bought the appeal site from Mr Nicolic in 2012, who in turn had bought it in 2001. At that time Mr Nicolic had lived in St Leonard's, the coastal town contiguous with Hastings, and says that he used the land as a leisure plot on which he had kept a caravan. It was an attractive place, and he had kept the same caravan there throughout his ownership. He said he had

¹ Decision notice ref. HS/FA/15/00981, dated 1 February 2016.

visited the site perhaps two or three times a week, and this amounted to visits on over a 100 days each year. As well as taking his children there, mostly in the summer, he had also kept the tools of his building trade there, in a strong-box that he checked regularly, or would take away to sites on which he was working. Furthermore, occasionally, he would also use the caravan for accommodation when working away from home. On summer visits with his children, he and/or his wife would probably have between 20 and 40 overnight stays in a year.

16. In 2008 Mr Nicolic and his family had moved to Gravesend, and he had used the site rather less. The strong box was inspected by others employed by Mr Nicolic at least twice a week. The caravan was used for leisure purposes for about 4 months over the summer, with visits roughly every 2 weeks until the land was sold.
17. Mr Nicolic also says that he laid timber logs and paving slabs to provide hardstanding, which he had removed when he sold the land. He had also kept Mercedes van and camper van on the site, and from time to time there were such things as a concrete mixer, fork lift, and a 2-tonne lorry kept there.
18. The appellant says that he had bought the land after seeing an advert saying the use was recreational with a potential for building. He had kept a caravan there for most of the time, unless he was travelling to steam shows, and has been there every weekend since buying it. He had the static caravan delivered to the site in December 2015, but he stressed that it was still towable rather than being a more or less permanent fixture.
19. The appellant argues he has continued essentially the same use as Mr Nicolic, who had himself established 11 years of continuous use from 2001 to 2012. This use had not been abandoned, so even if there had been a break, the lawful use would remain established.
20. An aerial photograph from Google Earth dated 2 June 2009 shows what is probably a single large vehicle close to the site entrance. Another, from July 2013 shows the site to be vacant, and from April 2015 shows 2 vehicles –one of which is probably a touring caravan. In September 2016, the mobile home can be seen in its current position at the southern end of the site. Aerial images put in by an objector show essentially the same situations, as well as one from 2005 showing the land to be vacant. Aerial photographs commissioned by the Council show the site to be vacant in April 2013 and with one vehicle – probably a touring caravan - in July 2015.
21. I accept that these images are – literally – snapshots in time. However, there is virtually nothing visible of any area of hardstanding, and very little evidence of any caravan or vehicle standing on the site in the long term, apart from some marking on the grass near the site entrance in the 2014 aerial photograph.
22. Mr Nicolic has put in a clear statement and he gave quite credible oral evidence. I accept it can be difficult to recall events from many years ago. However, it appears to me that his evidence became remarkably vague for the more recent years – roughly coinciding with his move of permanent residence from St Leonard's to Gravesend in 2008. In these later years it appeared that any leisure use diminished, and his caravan tended to be used for storing his builder's tools and equipment. His caravan was a 4-berth tourer, about 7

- metres long, and it is by no means clear how it accommodated the builder's equipment as well as sleeping space for the family.
23. Overall, I find that the evidence of Mr Nicolic lacks the precision I would expect to demonstrate the claimed 11-year period of continuous use claimed from 2001 to 2012. After that period, when the site was owned by Mr Bailey, there is again little in the way of firm evidence as to the continuous use of the site. There are no photographs submitted that might show the site in use, and no records of water use – such as bills, payments, or receipts that might indicate such use.
24. While the aerial photographs are by no means determinative, I find it surprising that none before September 2016 – when the mobile home can be seen – show significant use of the site. This despite the fact that nearly all photographs were taken between April and September of their respective years, when use of the site was consistently claimed to be at its greatest.
25. As to the placement of a mobile home, the construction of hardstanding and the formation of a foul/waste water drainage system. There is no dispute that the mobile home was positioned on the site in 2015. However, it is argued that there was hardstanding already in existence during Mr Nicolic's ownership,
26. I saw that the mobile home is supported on concrete slabs stacked upon compacted material. This compacted base looked very much like an aggregate bound with cement, and as a matter of fact and degree, I consider this to be a hardstanding, the laying of which constitutes operational development. Although I understand Mr Nicolic had laid slabs and timber as a base for his touring caravan, he said this had been removed before the site was sold. This base had been close to the site entrance, and not near the southern boundary. In my opinion the hardstanding has been laid in position at the southern end of the site for the sole purpose of providing a base for Mr Bailey's mobile home.
27. Furthermore, it appears the use made by Mr Nicolic, whether continuous or not, was quite low-key. There was a relatively small touring caravan on the site – taken away for work purposes when necessary – and one or two vehicles, one of which was used for work. In comparison, the appellant has the large mobile home on a hardstanding, the touring caravan, and much other paraphernalia distributed around the site. He has also erected the fence and gates at the entrance. To my mind there has been a significant change to the character of the site from being an open field in the countryside – perhaps with a caravan parked there – to a field dominated by residential artefacts. This change has clearly occurred since Mr Bailey bought the land in 2012, and probably became critical with the introduction of the mobile home and hardstanding in 2015. In the light of this, I consider the change to the current use has occurred since 2012. This is considerably less than the 10 years of continuous use required to give immunity from enforcement action.
28. Overall, I am not persuaded that, on the balance of probabilities, Mr Nicolic had used the site for stationing a caravan for holiday purposes for the claimed 11-year period prior to 2012, or that Mr Bailey continued that claimed use seamlessly from 2012 onwards. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning application

29. This ground is that planning permission should be granted for the alleged material change of use and operational development.
30. I consider the main issue in the case to be the effect of the alleged development on the character and appearance of the appeal site and surroundings, bearing in mind its location within the High Weald AONB, and the proximity of protected trees.
31. The appeal site is in open countryside, lying on relatively high ground sloping down towards the east. There are wide views over nearby villages and fields, Rye Bay and the sea, with Dungeness in the distance. In the immediate vicinity is the Hastings Country Park and Nature Reserve. The area is highly rural in character, and remote from built development.
32. Paragraph 170 of the National Planning Policy Framework (NPPF) advises that planning policies and decisions should contribute to and enhance the natural and local environment by various means - including recognition of the intrinsic character and beauty of the countryside. This is reflected in Policy HN9 of the Hastings Local Plan Development Management Plan of 2015, which seeks to protect the inherent visual qualities and distinctive character of areas of landscape value such as the AONB, and to permit development only if it is not detrimental to their character, scenic quality, and visual benefit.
33. The High Weald AONB Management Plan 2014-2019 states that the primary purpose of the AONB designation is to conserve and enhance the natural beauty of the area. It includes aims to protect the distinctive and historic pattern of settlement evident in the landscape so that it contributes positively to the natural environment. It identifies the top issues that should be addressed, including the erosion of character as a consequence of development that fails to respect the AONB character in terms of scale, form, design, and materials, and is unrelated to local needs. I have taken this advice to be a material consideration in my determination.
34. The presence of the mobile home, hardstanding, touring caravan and other items described above, such as the tables, stoves and portable WC give the site a cluttered and urbanised appearance, clearly of a residential character. This is at odds with the rural and undeveloped nature of the area. The mobile home and hardstanding are themselves incongruous elements in this rural scene on account of their size and prominence, and the uncharacteristic constructional materials. Although not subject of the enforcement notice, in my opinion the high fence and gates at the northern end of the site exacerbate the incongruous effect.
35. It is argued that the presence of caravans in the countryside is little different in appearance from those used to house seasonal agricultural workers, and that the site is not widely seen by the public. This may be so, but caravans for seasonal workers are there to serve a recognised economic/agricultural purpose, rather than the private enjoyment of individuals. Furthermore, the mobile home is readily visible from Mill Lane, and the site can be seen in long views from Martineau Lane to the east. In my view this development fails to recognise the intrinsic character and beauty of the countryside.

36. As to protected trees, a Tree Preservation Order (TPO) has been placed on two oaks within the dense hedge along the western appeal site boundary². The Council say there was damage to the hedge when the mobile home was brought to the site in December 2015. However, it is apparent from the appellant's description of delivery of the mobile home, from seeing its size, and the state of the hedge, that it could not reasonably have been brought onto the site by that route, and it must have been necessary to bring it in from the northern entrance. While there has clearly been some degree of clearing of undergrowth and possibly saplings, this does not seem to have been directly connected with the presence of the mobile home. I do not consider the protected trees are necessarily at risk from the development. Nevertheless, this does not lessen the harm I find to be caused in other respects.
37. The appellant argues that the development is of value by reason of its contribution to holiday accommodation in the Borough. However, I consider it is of limited value in this regard, since it is principally for use of the appellant and his family, who already live relatively nearby. It is more in the nature of a second home rather than holiday accommodation for a wider use. Policy E4 of the Hastings Planning Strategy includes aims for new visitor accommodation to be directed towards the seafront, main arterial routes, and close to the generators of demand. This site cannot realistically be regarded as being within any of these categories. Furthermore, I understand from the Council that the main problem with tourist accommodation in the Borough is one of quality, and that there is no significant lack in terms of quantity. I attach little weight to the claim that the development makes a significant contribution to holiday accommodation.
38. I therefore conclude on the main issue that the alleged development causes significant harm to the character and appearance of the appeal site and surroundings, bearing in mind its location within the High Weald AONB. The development does not accord with the development plan, notably with respect to Policies HN9 and DM1 of the Hastings Local Plan Development Management Plan of 2015, which include aims to protect landscape of value, and AONB interests, and for development to be of a good standard of design, protecting and enhancing local character. The appeal on ground (a) therefore fails.

Other matters - the 'hidden' appeal on ground (f)

39. S.57(4) of the Act sets out that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.
40. The appellant argues that if the appeal fails on ground (a), then use of the land could revert to a use for caravan storage, which it is claimed had become a lawful use during Mr Nicolic's ownership.
41. However, the appellant's principal and extensively made argument is that the use for that period had been for siting a caravan to provide holiday accommodation. Little evidence was adduced to support the continuing existence of a caravan storage use. The point appears to have been taken mainly from the Council officers' delegated report on the 2016 planning

² The Hastings Borough Council Tree Preservation Order no. 293 of 2016 – Land at East of Mill Lane Hastings.

application which states in the site description that '*The land has previously been used for the storage of holiday caravans*'. It is supported to some extent by Mr Nicolic's evidence, but little detail is evinced. However, such evidence as there is gives little indication of any period when this use may have occurred. As I note above, the burden of proof is on the appellant to show, on the balance of probabilities, why he considers a use has become lawful. There has been little attempt to do this, and on the balance of probabilities I do not consider this claimed previous lawful use has been made out. Had an appeal been made on ground (f) in this regard, it would not have succeeded.

42. As to the alleged installation of a foul/waste water drainage system, I saw that a waste pipe appears below the mobile home, and photographs appear to show it extending into the ground. However, on inspection it was clear that it does not connect to any below ground drainage installation. While I consider it proper to require removal of the waste water connection pipes associated with the disposal of foul/waste water - which I take to be those pipes above ground - it is excessive to require removal of '*any other soakaway or underground container*'. In the light of this, I intend to vary the enforcement notice by omission of that part of the requirement. Had an appeal been made on ground (f) in this regard, it would have succeeded.

Conclusions

43. For the reasons given above and having regard to all other matters raised I conclude that requirement (iii) is excessive. I shall vary the notice accordingly prior to upholding it. The hidden appeal on ground (f) succeeds to that extent.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jon Wills	of Counsel, instructed by Nicholas Kingsley-Smith, Solicitor.
He called:	
Alexander Nicolic	Previous owner of the appeal site.
Steve George	Friend of the appellant.
Gary Bailey	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Admas Habteslasie	of Counsel, instructed by,
He called:	
Chris Wilken	Trees Officer, Hastings Borough Council.
Clive Satchell	Planning Enforcement Officer Hastings Borough Council.
Eleanor Evans	Planning Services Manager Hastings Borough Council.

DOCUMENTS

- 1 Attendance lists (2 documents).
- 2 The Council's letter of notification of the appeal, dated 26 June 2018.
- 3 Letter of representation.
- 4 Appendices to Chris Wilken's proof of evidence.
- 5 Appendices to Eleanor Evans' proof of evidence.
- 6 Appendices to Clive Satchell's proof of evidence.
- 7 Appendices to the Council's Statement of Case.
- 8 Policy HN9 of the Hastings Development Management Plan.
- 9 Proposed planning conditions.
- 10 Land Registry title to the appeal site.
- 11 Legal authorities put in at the Inquiry.
- 12 Extract from the Encyclopedia of Planning Law and Practice concerning the conditional grant of planning permission.

PHOTOGRAPHS

- 1 Aerial photographs of the appeal site put in by the Council (4 no).
- 2 Photographs of the waste pipe below the caravan (7 no).