



Appeal Decisions

Inquiry held and Site Visit made on 9 July 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Appeal A: APP/A2335/C/18/3208785

Land at Langthwaite Farm, Langthwaite Road, Quernmore, Lancaster, Lancashire LA2 9EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Donald Deering against an enforcement notice issued by Lancaster City Council.
- The enforcement notice was issued on 5 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from the use of agriculture, forestry or other uses appropriate to the rural area, to the stationing of 5 (five) caravans for residential purposes on those parts of the Land shown hatched red on the attached plan.
- The requirements of the notice are:
 - a) Cease the use of the caravans for residential purposes;
 - b) Cease the use of those parts of the land shown hatched red on the attached plan for the stationing of caravans;
 - c) Permanently remove from the land the caravans together with all decking and all fixtures and fittings associated with the residential use of the caravans;
 - d) Reinstate the land shown hatched red on the attached plan to its former condition.
- The period for compliance with the requirements is 26 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld as corrected.

Appeal B: APP/A2335/C/18/3208788

Land at Langthwaite Farm, Langthwaite Road, Quernmore, Lancaster, Lancashire LA2 9EB

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Donald Deering against an enforcement notice issued by Lancaster City Council.
- The enforcement notice was issued on 5 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of part of the agricultural building (Sui Generis) as shown hatched red on the attached plan to a residential dwelling (C3).
- The requirements of the notice are:
 - a) Cease the use of the part of the building as shown hatched red on the attached plan for residential purposes;
 - b) Remove from the unauthorised dwelling all fixtures and fittings including the kitchen and bathroom;
 - c) Remove from the land all materials resulting from compliance with 5b) above.

- The period for compliance with the requirements is 26 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. All oral evidence to the Inquiry was given on oath.
2. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
3. For the avoidance of doubt, the planning merits are not before me. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of both cases. Hence, matters such as the suitability of the developments in this location, the effect on nearby occupiers in terms of noise and disturbance, and matters related to drainage are not relevant since these would concern the planning merits.

Appeal A: APP/A2335/C/18/3208785

Preliminary Matters

4. The appeal initially included ground (e) that copies of the notice were not served as required by Section 172 of the 1990 Act as amended. Prior to the Inquiry, the Council submitted an amended plan which excluded the land outside the appellant's ownership from within the red line. In addition, the appellant withdrew the ground (e) appeal.
5. The Statement of Common Ground, signed and dated by the main parties on 8 July 2019, confirms agreement that the red edge of the enforcement notice should be revised as per appendix 9 of the Council's statement. I was invited to correct the notice using my powers under Section 176(1)(a) of the 1990 Act as amended, which enable me to correct any defect, error or mis-description in the notice provided there would be no injustice to the appellant or to the local planning authority. At the Inquiry, both the appellant and the Council agreed there would be no injustice were I to substitute the amended plan. As there was no reason for me to find otherwise, I ruled that I intended to substitute the plan attached to the notice with the plan at appendix 9 of the Council's statement, as requested. The Inquiry proceeded accordingly.
6. At the start of the Inquiry, I asked the main parties whether the allegation was accurate in respect of the alleged breach of planning control. It is important that the allegation is correct as this forms the basis for the assessment of the evidence under ground (d).

7. I explained that, from the evidence, it appeared that the areas of land shown hatched in red had been occupied by caravans used for residential purposes and caravans which were simply being stored. In which case, the land as identified may have been in a mixed use. In mixed use cases, the allegation should refer to all the components of the mixed use, even if it is considered expedient that only one should cease. However, if the local planning authority seeks to 'under-enforce' they should have regard to the implications of Section 173(11) of the 1990 Act as amended.
8. The Council and the appellant agreed that the allegation was correct in respect of the southern area hatched red (the South Area) but the use of the northern area (the North Area) was less clear. The Council has subsequently suggested that the land identified as the North Area could be reduced in size to reflect the siting of two caravans which it is alleged were being used for residential purposes at the date of the notice. It is explained that the caravan storage was taking place on an adjoining but physically distinct area. An amended plan has been submitted accordingly. The appellant and the Council have confirmed there would be no injustice were I to substitute the amended plan. Again, there is no reason for me to find otherwise. Therefore, I have corrected the notice with the amended plan, which also reflects the amended red line to exclude land outside the appellant's ownership referred to above.
9. The Council has also suggested an amendment to the wording of the allegation to specify the numbers of caravans in each area. However, this is not necessary. The allegation concerns the material change of use of the land to residential purposes. It is the occupation of the caravans that confers the change of use, as opposed to the number of caravans. As such, I have corrected the allegation to remove reference to the alleged numbers. I am satisfied that no injustice would arise as a result of this correction.
10. I also queried whether requirement (b) was necessary, as it duplicates (a). The parties agreed there would be no injustice were I to combine the two requirements to reflect the allegation.

Reasons

11. The main issue in this case is whether the appellant has shown on the balance of probability that there was a material change of use of the land from agriculture to the stationing of caravan(s) for residential purposes on or before 5 July 2008 and that this use then continued for 10 years after the date of change without any significant interruption.
12. The appellant explained that it had not been possible to gather extensive evidence in relation to how the caravans were used and occupied due to the specific nature of that use. The transient nature of the occupants, combined with the appellant's desire to respect his tenants' privacy, limits the evidence available. In view of this, it was accepted that there was insufficient evidence in relation to North Area to meet the relevant tests. This, in itself, is not fatal to the ground (d) appeal, as it is only necessary to demonstrate continuous residential use within the hatched areas identified.
13. The appellant described how various people had come and gone from the caravans over the years from 1989, when the first caravan was sited. However, the appellant's own oral evidence does not support a finding that there was a residential use of the hatched land, by virtue of the occupation of a caravan or

caravans, for a period of 10 years after the date of change without any significant interruption.

14. Crucially, the appellant stated that the caravans were only occupied for “three quarters or four fifths of the time” during the relevant period. He also acknowledged that he was away for a period of 10 weeks from July to October 2008, and during this time he did know whether the caravans were occupied or not. In addition, the appellant gave conflicting oral evidence about the occupation of the caravans. A letter to the Council dated 12 July 2016, and a ‘newsletter’ from the appellant dated 13 December 2015 both contradict the appellant’s oral evidence in relation to the number of occupants.
15. Mr Goode, in his role as witness, conceded that none of the caravans were occupied all the time as far as he was aware.
16. Ms Walton gave evidence to the Inquiry under oath and I afford this evidence significant weight. Ms Walton was able to confirm her occupation of one of the caravans. However, Ms Walton’s evidence does not cover the whole of the relevant period.
17. Mr Pye, a nearby resident, also gave evidence at the Inquiry which contradicted the appellant. He explained that he became aware that the caravans were in residential use from 2015 due to more comings and goings along the lane. He was not aware of any residential use prior to that date.
18. The supporting letters and witness statements from nearby residents and interested people is vague in relation to the dates the caravans were in use, where the caravans were sited and how they were used and occupied. The letters from those who claim to be current or former occupiers of the caravans are similarly vague in relation to dates and their length of occupancy. It is also unclear whether one of the people named lived on the site or not, as the evidence is contradictory.
19. The letter from the appellant’s accountant, dated 25 March 2019, is not sufficiently precise in relation to how the caravans were used and occupied.
20. I have considered the aerial photographs dated 6 September 2005 and 10 May 2006, a mapping image from 9 June 2019 and other photographs of various dates. These show that static and mobile caravans were sited on several locations within the farm on those dates but, again, not how they were used and occupied over the relevant period.
21. Overall, the appellant’s evidence is imprecise and, at times, contradictory.

Conclusion

22. I conclude that the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how the Land shown hatched red has been used for the stationing of caravans for residential purposes for a continuous period of at least ten years.
23. Therefore, the appeal on ground (d) fails.

Formal Decision: Appeal A

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

- i) The deletion of "5 (five)" in paragraph 3.1 after "stationing of..";
 - ii) the deletion of requirements (a) and (b) in paragraph 5 and their replacement with a new requirement (a) which reads "Cease the use of the land shown hatched in red on the plan attached to this decision for the stationing of caravans for residential purposes"; and
 - iii) the substitution of the plan attached to the notice with the plan attached to this decision.
25. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/A2335/C/18/3209788

Preliminary Matters

26. At the start of the Inquiry, the appellant confirmed he wished to withdraw the evidence submitted as DD15W to DD21W inclusive. This concerned invoices for materials which it was claimed were in relation to the work on the appeal building, known as White Cottage. I have determined the appeal on this basis.

Reasons

27. The main issue in this case is whether the appellant has shown on the balance of probability that there was a material change of use of the agricultural building to a residential dwelling on or before 5 July 2014 and that this use then continued for four years after the date of change without any significant interruption. It is necessary to show when the premises were capable of providing viable facilities for living and when the alleged use commenced.
28. The appellant explained that he moved to Langthwaite Farm in 1986 and at this time the subject building was a derelict former store. He moved out of the farmhouse into a touring caravan around Autumn 2011, although I note that the statement gives this date as circa 2009/10. The appellant said he decided to restore the building and make it into living accommodation and an office/store. It is claimed that he started work on the building in late 2011, while he was living in the touring caravan. The works included structural repairs, and the installation of a kitchen and bathroom.
29. A photograph dated 5 November 2011 shows the building at that time was without a roof. It was stated that, by the Spring of 2012, the work to the ground floor had progressed to the extent that the appellant could move in, although the first floor was unfinished. I was referred to a photograph dated 8 December 2012, which shows the building with a roof and car port. The dormer window remained unglazed. The appellant maintained he moved into the White Cottage during the spring of 2012 and has lived there continuously ever since, aside from a few days when he stayed in the caravan while a guest visited. Aerial photographs dated 2013/14 show the touring caravan had gone by that date.
30. Mr Goode's oral evidence corroborated that of the appellant. As the nearest neighbour, living just across the yard since 2010, Mr Goode argued he was well placed to know where the appellant was living, especially as he shares electricity and water bills with the appellant. It was explained that the White Cottage was equipped with a bedroom, kitchen, sink, microwave, heating, a

cooker with an electric hob/oven and a bathroom from Spring 2012. Although the first floor was not complete at this time, the appellant moved in as soon as the facilities were available. Mr Goode said he was not aware of the appellant using any facilities elsewhere on the land after that date. He also confirmed that the appellant has lived in the White Cottage continuously since that date. Mr Goode's evidence was clear and precise and I find it to be credible.

31. Ms Walton's oral evidence was also corroborative. She explained that she lived at the farm from the Summer of 2014 to the Autumn 2017, returning on 31 October 2018. When living elsewhere in 2017/18, Ms Walton visited the farm daily as her horses were kept there. She confirmed that the appellant lived in the White Cottage all the time between the relevant dates. Also, during her time at the farm, either as a resident or when looking after her horses, Ms Walton said would often see the appellant in the cottage and on occasions she visited him when he was unwell and confined to bed.
32. I have had regard to the letters and witness statements which support the appellant's case. These tend to be more general. Although they seek to confirm that the appellant has lived in White Cottage since early 2012, it is unclear how the signatories can be certain of that date or how they knew that the cottage was used as a residence and occupied for the whole of the relevant period. Consequently, this written evidence carries limited weight.
33. The oral evidence provided by the appellant and the two other witnesses conflicts with information provided to the Council's Revenue Services officers, detailed in a letter from the Council dated 4 February 2016. The letter was written contemporaneously following a visit to the properties at Langthwaite Farm on 3 February 2016. It was sent to the appellant to confirm what was discussed on site. The letter states that - "You advised that you started moving to 'white cottage' approx 2 years ago [prior to 3 February 2016] but your move was complete fully from 1 February 2015. From that date the [farmhouse] was empty and unfurnished".
34. The letter continues in relation to the White Cottage - "You advised that you have been moving to this converted store for some 2 years but that the furniture was moved fully from the now empty farmhouse on 1 February 2015".
35. The letter was provided by the Council to summarise what they were told by the appellant during a site visit. It is a letter written for official purposes and carries significant weight. The Council has also provided a copy of an email which confirms that Council Tax has been charged on the White Cottage from 1 February 2015.
36. The letter contradicts the sworn evidence. However, it was written in relation to matters concerning Council Tax. The appellant explained that the reference to a gradual move related to furniture. The appellant said that when he took up residence, he had minimal furniture, consisting of chairs, a table, a bed, a desk and a filing cabinet. He moved items from the caravan or the farmhouse when he needed them. Mr Goode corroborated the appellant's account and maintained that the premises were capable of viable facilities for living in Spring 2012, which is when the alleged use commenced.
37. The Council argued that it was not possible to accurately establish the point of occupation. The caravan was parked very close to the cottage and it would be very difficult for anyone other than the appellant to know for sure where he

was living. It is also claimed that receipts submitted by the appellant, which purport to be for materials used in the conversion of the building, post-date the alleged works. It was argued that this casts doubt on the appellant's evidence. In addition, a planning application plan dated May 2015 shows the White Cottage as a store not a residence.

38. The oral evidence was clear and unambiguous in relation to when the White Cottage provided viable facilities for living. The witnesses confirmed that, by the Spring of 2012, the cottage contained the necessary facilities for day to day private domestic existence. Although the building works to the first floor were not complete, this did not prevent the appellant occupying the ground floor from this date. The gradual habitation described in relation to Council Tax could legitimately refer to moving furniture and other items as explained.
39. The plan attached to the planning application was prepared for a different purpose and it is not unusual for such plans to be inaccurate in relation to buildings outside of the red line.
40. The Council maintains that the appellant's evidence is inconsistent, which casts doubt on his reliability as a witness. However, Mr Deering was precise about when he moved into the cottage and he provided a legitimate explanation for the inconsistency in the information he gave to Revenue Services and the receipts for the building materials. In addition, the oral evidence of Mr Goode and Ms Walton was clear and precise, and it carries significant weight as evidence given under oath.
41. Mr Pye, a nearby resident, also gave oral evidence. He explained that the appellant did not live in the White Cottage until 2016 when the farmhouse was let to tenants. He said he knows this because he could see lights in the upstairs rooms of the farmhouse late into the evening. This oral evidence was also clear and precise. However, Mr Pye lived further away and he was less likely than Mr Goode and Ms Walton to know where the appellant was living. Lights in the upper floors of the farmhouse do not show the appellant was living there.
42. Overall, I conclude that the appellant has shown on the balance of probability that there was a material change of use of the agricultural building to a residential dwelling on or before 5 July 2014 and that this use then continued for four years after the date of change without any significant interruption.

Conclusion

43. For the reasons given above, I conclude that the appeal should succeed on ground (d).

Formal Decision

44. The appeal is allowed and the enforcement notice is quashed.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:
Mr David Goode

He called:
Mr Donald Deering
Ms Emma Walton
Himself

FOR THE LOCAL PLANNING AUTHORITY:
Mr Anthony Gill of Counsel instructed by Lancaster City Council legal services department

He called:
Mrs Petra Williams
(Planning Officer)

INTERESTED PERSONS:
Mr Chris Pye
(Local resident)

ALSO PRESENT:
Mrs Alison Hesketh
(Enforcement Officer)

DOCUMENTS

SUBMITTED DURING THE INQUIRY

1. Statement of truth plus list of current medication (Mr Deering)
2. Revised Statement of Common Ground dated 8 July 2019
3. Note confirming withdrawal of evidence DD15W to DD21W inclusive
4. Proposed amended plan and alternative wording for the notice

SUBMITTED AFTER THE INQUIRY BY AGREEMENT

1. Proposed amended plan



Plan

This is the plan referred to in my decision dated: 13 August 2019

by **Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**Land at Lanthwaite Farm, Lanthwaite Road, Quernmore, Lancaster, Lancashire
LA2 9EB:**

Reference: APP/A2335/C/18/3208785

Scale: NTS

