

Appeal Decision

Site visit made on 31 July 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref : APP/X2220/C/18/3212351

Land to the south east of Hawthorns, Shelvin, Wootton, Canterbury, CT4 6RL

- 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 Hamza Haddo against an enforcement notice issued by Dover District Council.
- The notice was issued on 17 August 2018.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use in the land from agriculture to a mixed use for agriculture and storage purposes, including the storage of a static caravan, shipping container, lorry back and stored items, goods and paraphernalia.
- The requirements of the notice are 1) cease the use of the land for a mixed use for the purposes of agriculture and storage purposes involving the storage of a caravan, shipping container, lorry back and other stored items and paraphernalia; 2) remove from the land the static caravan, shipping container and lorry back identified by photographs A, B and C and any other stored items, goods and paraphernalia being kept on the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Preliminary Matter

1. The Appellant says that he intends to remove the lorry back from the site. I have no reason to doubt this but I must consider the breach of planning control as it existed at the time of the issue of the notice and this includes the lorry back.

Ground (c) appeal

2. This ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
3. A breach of planning control comprises development without planning permission. Development is defined in section 55 of the 1990 Act as amended to include the making of any material change in the use of any buildings or other land. The Appellant argues that there has been no material change in use as the storage is ancillary to the agricultural use of the land.

4. The Appellant says that the title deeds of the land refer to the site as grazing land and that he uses it to raise livestock. This falls within the definition of agricultural use.
5. The notice alleges a change of use from agriculture to a mixed use for agriculture and storage purposes including the storage of a static caravan, shipping container, lorry back and stored items, goods and paraphernalia.
6. The Appellant says that the caravan is a mobile home and not a static caravan as it is not permanent and can be easily moved. This may be correct but the notice concerns its storage on the land for non-agricultural purposes.
7. The Appellant says that he needs the caravan as a safe sanitized environment and that it is mainly used for shelter and personal hygiene in connection with his every day duties in caring for his animals. He says that the main purpose of the shipping container and lorry back is to store items related to the land such as animal feeds and equipment.
8. The Council say that in discussions with the owner the container was confirmed at one time to be used for the storage of the contents of a former commercial garage. There is also no dispute that domestic items including garden seating, BBQ and parasol have been stored on the site. This casts doubt on the Appellant's claims.
9. The burden of proof in this appeal rests on the Appellant and on the evidence before me I cannot conclude with any certainty that the use of the caravan, shipping container and lorry back is ancillary to the lawful agricultural use of the site. The Appellant has not satisfied the burden of proof.
10. As a matter of fact and degree on the evidence before me I conclude that the matters alleged in the notice comprise development requiring planning permission.
11. For the reasons given the ground (c) appeal does not succeed.

Ground (a) appeal and deemed application

Main Issue

12. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the area with particular regard to its location in an Area of Outstanding Natural Beauty.
13. The development plan (including the Dover District Core Strategy) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting and by giving great weight to the landscape and scenic beauty of an AONB. Policy DM15 of the Core Strategy provides that development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted if certain specified criteria are met. These criteria include that the development is justified by the needs of agriculture or a need to sustain the rural economy or a rural community or it cannot be accommodated elsewhere and it does not result in the loss of ecological habitats.
14. The appeal site is located in the hamlet of Shelvin within the Kent Downs Area of Outstanding Natural Beauty (AONB). The site sits in open countryside in a rural setting. The caravan, shipping container and lorry back are sited in

- different locations across the appeal site as shown on the plan attached to the notice.
15. The development is visible from the byway which is located to the east of the site. The use of the land for storage with the introduction of various structures and goods introduces alien features into a rural landscape designated as an AONB. The development with its cluttered and domestic appearance is out of keeping in this area of landscape and scenic beauty and causes harm to the character and appearance of the area including the AONB. There is no compelling evidence before me that the storage is justified by the needs of agriculture and cannot be stored elsewhere.
 16. I have taken into account the Appellant's desire to secure his belongings but this does not justify the identified harm. There are no environmental, social or economic benefits that alter my conclusions.
 17. I note the storage of vehicles and containers at the nearby industrial unit. I do not know its planning history but this use is not characteristic of the wider locality. It does not justify the harm to the AONB caused by the development the subject of this appeal.
 18. I conclude that the development causes undue harm to the character and appearance of the area and fails to conserve or enhance the character and appearance of the AONB contrary to relevant policies in the development plan (including policy DM15 of the Core Strategy) and the Framework.
 19. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Policy Guidance. No conditions are proposed by either party in the event that the appeal is allowed and I consider that none would overcome the identified harm. Planning permission should not be granted for the development.
 20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

21. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector