
Appeal Decisions

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: 23 August 2019

Appeal A Ref : APP/X2220/C/18/3218112

Appeal B Ref : APP/X2220/C/18/3218113

Appeal C Ref : APP/X2220/C/18/3218114

Land at Whistlers Forstal, Coombe Lane, Ash, Canterbury, CT3 2BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Leonard Town, Appeal B by Mrs Ann Town and Appeal C by Mr James Holliday against an enforcement notice issued by Dover District Council.
- The notice was issued on 29 November 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change in the use of the land for the stationing of a caravan for residential occupation.
- The requirements of the notice are 1) cease the use of the land for the stationing of a caravan for residential occupation, 2) remove the caravan and any associated domestic and/or residential paraphernalia and equipment including the septic tank, along with materials and other items generated from the removal of the caravan from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.

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

Preliminary matters

1. The Appellant claims that the notice is inaccurate. He says that the plan attached to the notice does not accurately mark the location of the caravan.
2. Regulations provide that an enforcement notice shall specify the land to which it relates whether by reference to a plan or otherwise. Considering the notice as a whole there is no misunderstanding between the parties as to the caravan the subject of the notice and the parcel of land on which it sits. I do not consider that any location error as indicated by the Appellants affects the validity of the notice or requires any correction.
3. The Appellants lodge an appeal under ground (c) that the matters alleged do not constitute a breach of planning control. But there are no arguments before me that planning permission is not required for the alleged breach. Their argument is that the caravan has never been used for residential occupation. This is more pertinent to a ground (b) appeal namely, that the alleged breach has not occurred as a matter of fact. I shall therefore determine this as a ground (b) appeal.

Ground (b) appeal

4. The enforcement notice alleges the material change in the use of the land for the stationing of a caravan for residential occupation. The Appellants argue that the change of use has not occurred as a matter of fact because the caravan has not been used as a separate unit of residential accommodation. The Council argue that the primary and lawful use of the site is agriculture and that the caravan has been used as residential occupation by a family member.
5. The Appellants reside in a dwelling know as Whistlers Forstal which faces Coombe Lane. The land the subject of the notice is located on the opposite side of Coombe Lane. Whilst the appeal site and Whislars Forstal are in the same ownership they are physically separate plots of land with a highway inbetween. I saw at my site visit that the land surrounding the caravan is laid to lawn with some trees and garden furniture and some sheds.
6. The onus of proof in this appeal rests on the Appellants and the test of evidence is the balance of probabilities. The Appellants' evidence does not need to be independently corroborated in order to be relied on but it does need to be sufficiently precise and unambiguous.
7. The Appellants say that they purchased the land in 1999 as an extension to the garden at Whistlers Forstal. There are no title documents before me. They refer to a letter from a solicitor confirming that the site is part of the curtilage of Whistlers Forstal but I have not seen a copy. They say that since they purchased the land it has been used for the growing of vegetables, the keeping of a goat, chickens and geese and general use for the quiet enjoyment of the family as a domestic garden. This is supported by a 2008 planning application which describes its use as a garden and the photographs provided by the Appellants. The Council argues that the lawful use of the site is agriculture but I cannot conclude this with any certainty on the evidence before me.
8. The Council's case is that the caravan is used for residential occupation by a family member. But there is little supporting evidence to corroborate this. The description of the land as a smallholding in a 2016 planning application is not conclusive as to use. The Appellants deny that the caravan has been lived in as a separate residential unit and say that it is used occasionally by family members for purposes ancillary to the main house. I note that it is connected to electricity at the main house. The layout of the caravan includes facilities that would potentially enable it to be used as a separate residential unit and the Council draw attention to a satellite dish, security lighting and steps. But there is no compelling evidence that it has ever been lived in for any significant period of time as a residential unit separate to Whistlers Forstal. Looking at all of the evidence before me I cannot conclude with any certainty that the alleged breach of planning control has occurred as a matter of fact .
9. There is insufficient evidence before me to cast any serious doubt on the Appellants' claim. I cannot conclude with any certainty that a change of use from agriculture to use of the caravan for residential occupation has occurred as a matter of fact.

10. On the evidence before me I conclude that on the balance of probabilities the alleged breach of planning control has not occurred as a matter of fact.

11. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed.

Formal Decision

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

S. Prail

Inspector