
Appeal Decisions

Site visit made on 23 October 2019

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

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal A Ref : APP/Z3825/C/18/3216424

Land at Windacres Farm, Church Street, Rudgwick, Horsham, West Sussex, RH12 3EG

- The appeal is 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 John Bailey against an enforcement notice issued by Horsham District Council .
- The notice was issued on 25 October 2018 .
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from use for agricultural purposes to mixed use for agriculture and the stationing of a storage container for human habitation.
- The requirements of the notice are i. permanently cease the use of the land for the stationing of a storage container (outlined in blue on the plan attached to the notice), ii. Permanently cease the use of the land or any part thereof for residential human habitation, iii. permanently remove from the land the storage container, and all residential paraphernalia associated with it.
- The period for compliance with the requirements is six months.
- The appeal is proceeding 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 is dismissed and the enforcement notice is upheld.

Appeal B Ref : APP/Z3825/C/18/3216641

Land at Windacres Farm, Church Street, Rudgwick, Horsham, West Sussex, RH12 3EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal B is made by Mr John Bailey against an enforcement notice issued by Horsham District Council.
- The notice was issued on 25 October 2018 .
- The breach of planning control as alleged in the notice is without planning permission the erection of an agricultural building and laying of associated hardstanding.
- The requirements of the notice are i. permanently remove the barn structure from the land (approximately shown outlined in green on the plan attached to the notice), ii. Permanently remove from the land all foundations and concrete floor inside and underneath the barn structure (approximately shown hatched yellow on the plan attached to the notice), iii. permanently remove the hardstanding area adjacent to the barn (approximately shown outlined and hatched blue on the plan attached to the notice) from the land, iv. remove from the land all materials and debris resulting from taking the above steps, v. restore the land to its former condition.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the

Town and Country Planning Act 1990 as amended.

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

Appeal A

Ground (a) appeal and deemed application

Main Issues

1. The main issues in the determination of this appeal are (i) whether the location is a suitable site for residential use and (ii) the effect of the development on the character and appearance of the surrounding area.

Suitability of the site for housing

2. The appeal site is located in the countryside outside the built up area. The enforcement notice concerns a shipping container that sits in the north end of an open field. The surrounding area is mainly open fields. A new housing development is being constructed nearby. The container is green in colour and has an access door and window on the front elevation and a small window on the rear elevation serving a bathroom. There is no dispute that it has a bed, kitchen with cooking facilities, wc/bathroom and is occupied for residential purposes.
3. The development plan (including the Horsham District Planning Framework (the HDPF)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. Policy 26 of the HDPF states that outside built up areas the rural character and undeveloped nature of the countryside will be protected against inappropriate development. Proposals must be essential to its countryside location and meet one of a number of specified criteria which include supporting the needs of agriculture or forestry or enabling the sustainable development of rural areas.
4. The Appellant argues that the container is needed as a temporary dwelling to enable him to manage the farm and nearby business. He says that he moved into the container because he had nowhere else to live as he had sold his home which was in close proximity to the site. Whilst I note the photographs and accounts before me there is no detailed evidence as to what aspects of the farm holding or commercial business activities require an on-site presence. I note that it is possible that the Appellant will purchase one of the residential units being erected nearby but this is speculative and no completion date is provided.
5. I am not satisfied on the evidence before me that there is adequate justification for the development. There is insufficient evidence to enable me to draw a conclusion that there is an essential need for the Appellant to live at the site. I am not persuaded that the proposed dwelling is essential to the location and it fails to accord with relevant policies in the development plan (including policy 26 of the HDPF) and the Framework.

Character and appearance

6. The surrounding area is characterised by its rural landscape. Although there are building works visible from the site in connection with a housing development I agree with the previous Inspector on appeal who concluded that the site takes its character in the main from its direct association with the adjoining undeveloped open countryside land. A residential use is out of keeping in this setting and is likely to be accompanied by other paraphernalia which would introduce further domestic appearance into its rural setting. It represents inappropriate development in the countryside.
7. The storage container is industrial and urban in appearance in contrast to its rural open setting. The hedging on the field boundary to the west partially screens views of the container to/from the west but particularly when trees are not in leaf it is visible in the surrounding landscape including from public rights of way. It creates a discordant element and landscape harm that is not in keeping with the character and appearance of the locality.
8. I conclude that the development causes undue harm to the character and appearance of its rural setting contrary to relevant policies in the development plan (including 26 of the HDPF) and the Framework

Conclusions

9. The development causes harm to the character and appearance of the area and the location does not provide a suitable site for residential use contrary to relevant policies in the development plan (including policy 26 of the HDPF) and the Framework.
10. I have taken into account the concerns expressed by the Appellant about the security of the site. I note the thefts and vandalism drawn to my attention but I am not persuaded that alternative measures could not be introduced which would not create the identified harm.
11. I have taken into account the Appellant's personal circumstances (including the letter provided by his GP) but I am not persuaded on the evidence before me that his needs cannot be met by alternative means and they do not outweigh my concerns.
12. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the personal circumstances of the Appellant. The Appellant proposes a temporary personal permission that expires within 18 months of any planning permission granted.
13. The rights of an individual to a home must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interest. I have balanced the private interests and personal circumstances of the Appellant and the public interest in bringing the identified harm to an end without unnecessary delay. A period of 18 months is lengthy and would create an unnecessary and disproportionate delay in removing the identified harm. A period dependent on a grant of permission or the provision of alternative accommodation would create unreasonable uncertainty. I am not satisfied that a temporary personal permission is justified or reasonable in this case.

14. For the reasons given above the appeal does not succeed and planning permission is not granted on the deemed application.

Appeal B

Ground (c) appeal

15. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55 of the 1990 Act (as amended) and includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
16. The Appellant argues that the agricultural building (except for its extension) benefits from prior approval. He makes no argument in respect of the hardstanding and concrete floor.
17. Prior approval for the erection of an agricultural storage barn (ref DC/12/1339) was issued in 2012. But I agree with the Council that the building the subject of the notice has not been constructed in accordance with that approval. It is appropriate in this case to consider the building as a whole including what the Appellant describes as an extension. It is significantly bigger than that which has been granted prior approval. It is materially different and comprises development for which planning permission has not been granted.
18. For the reasons given this ground of appeal does not succeed.

Ground (f) appeal

19. This ground of appeal is that the steps required by the notice are excessive.
20. There are two purposes that the requirements of an enforcement notice can seek to achieve – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach. In this case the notice requires the removal of the unauthorised development and restoration of the land to its former condition. Its purpose is therefore to remedy the breach of planning control and no lesser steps than those set out in the notice could achieve the purpose of the notice.
21. The Appellant argues that an appropriate lesser step would be the removal of the extension only. But this would not achieve the purpose of the notice.
22. Whilst it is correct that the purpose of an enforcement notice is not punitive it is not the purpose of a ground (f) appeal to run planning merit arguments concerning part of the unauthorised development. These arguments may be pertinent to a ground (a) appeal but there is no such appeal and deemed application for planning permission before me. The caselaw drawn to my attention by the Appellant does not alter this conclusion.
23. For the reasons given above this ground of appeal does not succeed.

Formal Decisions

Appeal A

24. 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).

Appeal B

25. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector