



Appeal Decision

Site visit made on 18 September 2019

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2019

Appeal Ref: APP/V2635/C/18/3212469

Land at Horsemans Rest, Littlemans Way, Stoke Ferry, King's Lynn

- 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 Ms Theresa Gregory against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice, numbered 17/00040/UNAUTU, was issued on 28 August 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agricultural land to a mixed use of agricultural land and use for residential/domestic purposes.
 - The requirements of the notice are:
 - (a) The use of the Land for the stationing of a caravan and associated paraphernalia for residential/domestic purposes permanently ceases.
 - (b) The caravan and associated paraphernalia used for residential/domestic purposes are permanently removed from the site.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 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 173(5) of the Act as amended have lapsed.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied

Preliminary and procedural matters

1. The appellant did not attend the site visit scheduled for 15:00 on 18 September 2019. The Council was represented but in the absence of the appellant I asked the Council's officer to leave whilst I made notes from outside of the site. I am satisfied that I could see sufficient from outside the site to determine the appeal.
2. The appellant maintains that the address stated at paragraph 2 of the enforcement notice is incorrect and that the land is not known as "Horsemans Rest". The appellant explains that, when purchasing the land in 2002, she requested that the two plots were changed into just one plot, and that this plot be called Horsemans Rest. The appellant goes on to explain that, for reasons unknown, the Land Registry kept the two plots separate and named only one of them as Horsemans Rest (the plot with the title number NK212058). The caravan (referred to by the appellant as a mobile home) is sited on the second plot with the Land Registry title number NK139157. I gather from the appellant's address, as stated on the appeal form, that this second plot is known as Mallards Mooring.

3. The Council accepts that the appeal site is described by the Land Registry as land on the North side of Little Man's Way, Stoke Ferry, and that this is the plot having the title number NK139157. The Council also accepts that the name Horsemans Rest properly relates to a separate parcel of land, being that referred to by the appellant (i.e: the plot titled NK212058).
4. I note, however, that the Council served a Planning Contravention Notice (PCN) on the appellant which clearly refers to the land now subject to the enforcement notice as Horsemans Rest. That address was not challenged by the appellant in her response to the PCN. Furthermore, there was a previous appeal relating to this site following the issue of an enforcement notice in July 2017 against essentially the same breach of planning control alleged in the current notice (APP/V2635/C/17/3183252). The address to which that enforcement notice related was again stated as being Horsemans Rest but on that occasion appears not to have been challenged by the appellant. Having regard to that and the appellant's response to the PCN, I consider that it was entirely reasonable for the Council to state the address as Horsemans Rest again in issuing the present notice.
5. Nevertheless, now that the matter has been raised, it would be appropriate to correct the notice in this respect. In doing so, I shall adopt the address stated in the Land Registry title rather than the colloquial name of Mallards Mooring, the origin and applicability of which are not entirely clear to me. I note that the spelling of "Little Man's Way" used by the Land Registry is different to that used by the Council, but since I am adopting the address used by the Land Registry I shall also adopt their spelling of the road name. In any event, the land to which the notice relates is clearly shown on the plan attached to the notice and there is no dispute in that regard. I am therefore satisfied that I can correct the notice in this respect without causing injustice.
6. The previous appeal succeeded on ground (e) and that enforcement notice was quashed. In allowing that appeal, the Inspector commented under preliminary matters that it was the use of the land for residential/domestic purposes that the notice required to cease. The Inspector therefore considered that the requirements in that notice relating to the stationing of a caravan and associated paraphernalia was not necessary. The Inspector then indicated that, had the notice not been quashed for other reasons, those requirements would have been deleted.
7. I note that the current notice contains the same requirement at paragraph 5(a) that the previous Inspector considered unnecessary. I concur with the previous Inspector that the notice is intended to attack the use of the land for residential/domestic purposes, and I will vary the notice to delete that requirement. I am satisfied that I can do so without causing injustice.
8. In her appeal statement, the appellant explains why in her view a residential presence is necessary on this land, specifically in relation to the theft of and care for livestock. The appellant also refers to a number of other matters, including the lack of housing generally. These are all matters that relate to the planning merits of having a residential presence on the land and which would therefore fall to be considered under an appeal on ground (a): namely, that planning permission ought to be granted for those matters stated in the notice. However, because the appeal on ground (a) has now lapsed, those are matters that I am not able to take into account in determining this appeal.

9. The start letter for this appeal indicates that the appeal is proceeding on grounds (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. However, the appeal on ground (e) is not expressly relied upon on the appeal form and I am satisfied that this ground of appeal is not implied within any of the other grounds of appeal that are relied upon. I have therefore not considered that ground of appeal.
10. In relation to the grounds of appeal that are relied upon, beyond repeating the view that the address of the site is not Horsemans Rest, the appellant has provided no evidence in support of grounds (b) or (c). Furthermore, the sole argument advanced by the appellant in support of ground (f) is confined to requesting that I grant a Certificate of Lawfulness for residential use in association with the agricultural use of the land. That argument is not relevant to an appeal on ground (f) and would more properly fall to be considered under ground (d). For these reasons, I have not considered the appeals on grounds (b), (c) and (f) further and the appeals on these grounds all fail. This leaves just the appeals on ground (d) and (g) to be considered.

The appeal on ground (d)

11. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
12. The appellant contends that there has been a mobile home on the site since 2002. In support of that, the appellant provides a copy of a statement made by the Council in relation to a planning appeal submitted in 2006 (APP/V2635/A/06/2011230). In that statement, reference is made to an occupied caravan being on the site in or around 2005, albeit it is apparent from the context that the caravan did not have the benefit of planning permission at that time. It is the Council's opinion, not challenged by the appellant, that the residential use of that caravan ceased in or around November 2007, and thereafter the caravan was used for storage, shelter and food preparation in association with the lawful use of the land for agriculture.
13. The appellant's response to the PCN appears to confirm the Council's view. In completing the PCN, the appellant explained that the mobile home now on the land is a replacement for one that was vandalised. Moreover, the appellant indicates in the PCN that she has lived in the mobile home only from 2016 onwards. Prior to that, the appellant indicates that she lived in a property in Fairfield Road, Stoke Ferry.
14. The breach of planning control alleged in the notice is the material change of use of the land to a mixed use of agricultural land and use for residential/domestic purposes. It is clear from the appellant's response to the PCN that the residential component of this mixed use ceased in or around 2007 and was only resumed in 2016, a period of some 2 years or so. I therefore conclude that, on the balance of probability, the residential use of the land (whether in conjunction with the agricultural use of the land or not) has not been continuous for a period of 10 years and that the Council could take enforcement action on the date on which the notice was issued.

15. Accordingly, the appeal on ground (d) fails.

The appeal on ground (g)

16. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three calendar months.
17. The essence of the appellant's appeal on this ground is that the land has now become unsaleable. The appellant does not expand upon that basic point, but in any event the notice does not (and indeed could not) require the land to be sold. The possibility or otherwise of selling the land is therefore not a matter relevant to this ground of appeal. The notice, as I propose to vary it, requires the use of the land for residential/domestic purposes to cease and the caravan to be removed. The appellant has offered no reasons or evidence as to why those actions could not be achieved within the three months stated in the notice.
18. Although not specifically raised by the appellant, I am mindful that the dismissal of this appeal would result in the appellant and her partner losing their home. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest. In this context, I am also aware that the appellant's partner suffers from ill health.
19. The appellant indicates that the only options available to her and her partner are either to stay in the mobile home or in their car. But it seems to me that other options may be available to them. For example, moving the mobile home to a site that has the benefit of planning permission for the stationing of caravans and mobile homes. No evidence has been provided to demonstrate that this would not be a viable option. In the absence of that evidence, I am not persuaded that there is need to extend the period for compliance with the notice. I am satisfied the period of compliance of three months stated in the notice is a proportionate response to the breach of planning control that has occurred, such that the interference with the appellant's rights under the HRA is justified in the circumstances.

20. Accordingly, the appeal on ground (g) fails.

Conclusion

21. For the reasons set out above, I conclude that this appeal should not succeed and I will uphold the notice with a correction and a variation.

Formal decision

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

- at paragraph 2 of the notice, deleting the words "Land at Horseman's Rest Littlemans Way Stoke Ferry King's Lynn" and substituting there the words "Land on the North side of Little Man's Way, Stoke Ferry".

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

- at paragraph 5(a) of the notice, deleting the words “The use of the Land for the stationing of a caravan and associated paraphernalia for residential/domestic purposes permanently ceases” and substituting there the words “Cease the use of the land for residential/domestic purposes”.

24. Subject to that correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR