



Appeal Decision

Site visit made on 1 October 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/X2220/C/18/3214670

Land on east side of Roman Road, West Langdon, Dover

- 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 Act).
- The appeal is made by Miss Jade Smyth against an enforcement notice issued by Dover District Council.
- The enforcement notice was issued on 25 September 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from agriculture to a mixed use for agriculture and storage of a caravan.
- The requirements of the notice are:
 1. Cease using the land for storage purposes and stationing of a caravan
 2. Remove the caravan, demolish the steps and remove all paraphernalia including waste, rubbish and materials from the land.
 3. Disconnect all services from the caravan and remove all associated connecting apparatus from the land.
 4. Return the condition of the land to its former appearance and regrade with top soil followed by reseeding with grass.
- The period for compliance with the requirements is steps 1, 2, 3 and 4 above to be complied within 3 calendar months of the date on which the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. I understand that the caravan was replaced during the course of the appeal and may be in a slightly different location, albeit adjacent to that of the previous caravan. As the enforcement notice attacks the use of the land, this would not affect the validity of the notice.
2. I note that the stationing of a caravan on the land has been subject of a previous enforcement notice that was held to be a nullity at appeal¹. This was because the allegation in that case, 'the material change of use of the land for the stationing of a caravan,' did not describe the unauthorised use.
3. The enforcement notice subject of this appeal provides more detail as to the use of the land, alleging that the land is in a mixed use, for 'agriculture and storage of a caravan.' Storage can be a use in its own right, and hence also part of a mixed use. Consequently, the current notice is valid.

¹ Appeal reference APP/X2220/C/17/3177791

4. The requirements of the notice do not reflect the wording of the breach of planning control. They are also not in a logical order and the final requirement exceeds what is alleged in the breach of planning control.
5. The first requirement refers to the use of land for storage purposes and stationing of a caravan, whereas the breach refers to the storage of a caravan. As I consider the appellant has interpreted the notice correctly, I can correct the notice to state "cease using the land for the storage of a caravan."
6. The third requirement of the notice requires the services to the caravan to be disconnected but is located after the second requirement to remove the caravan. I can correct the notice by swapping these requirements around.
7. The fourth requirement is that the land should be regraded with top soil and reseeded with grass. However, this element of the requirement is unnecessary given that it already requires the condition of the land to be returned to its former appearance.
8. I am satisfied that I can make these corrections without injustice to the parties using powers available to me under section 176(1) of the Act.
9. My attention has been drawn to the European Convention on Human Rights as enacted through the Human Rights Act 1998. However, it is not open to me to consider this under the grounds of appeal (b), (c) and (e) which are legal grounds of appeal and are determined solely on matters of fact and law.

The Appeal on Ground (e)

10. An appeal on ground (e) is that copies of the enforcement notice were not served as required by Section 172 of the Act. That section requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates.
11. I understand that the land is owned by two brothers. The Planning Contravention Notice (PCN) that was returned in October 2016 indicates that the two daughters of one of the brothers, including the appellant, manage the land. The PCN was two years old by the time the notice was served, so likely to have been out of date by that stage. The PCN indicates that the daughters are not occupiers, although other evidence, including a previous planning application², suggests otherwise. From the evidence of their involvement and management of the land I am satisfied that the daughters are relevant "occupiers" for the purposes of the Act. I consider that the Council should, therefore, have served notice on the two owners and two occupiers.
12. The Council sought to obtain the address of owners and occupiers from the Land Registry shortly prior to service of the enforcement notice and through the PCN. Although the Council have not provided signed and dated certificates of when and how service of the enforcement notice was achieved, they state that service was effected on owners and occupiers by affixing a copy of the notice to the caravan door on 26 September 2018, addressed to owner/occupier. That is in accordance with Section 329(3) of the Act. That copy was found by the appellant.

² Reference DOV/14/00213

13. The notice was served by hand on the appellant's father, whilst the appellant was present. The appellant was also sent a copy of the notice by email. Therefore, the main issue is whether the notice was served correctly on the appellant's sister and uncle.
14. According to the undated and unsigned file note supplied by the Council, the notice was served on the two owners of the land at the address that, according to the Land Registry, the land is registered. They state that the notice was pinned to the door, although that has been disputed by the appellant.
15. I note that no address was provided for the second owner in the PCN and his address is not known to the appellant. There is no evidence submitted by the appellant that she has been in contact with him since the notice was issued. On that basis, it is difficult to see how she can claim he was not served and, if so, how he has been substantially prejudiced.
16. Nevertheless, taking account of all the above, in particular service of the notice in accordance with Section 329(3) of the Act, I conclude that the method of service was sufficient to comply with Section 172 of the Act.
17. The appeal on ground (e) therefore fails.

The Appeal on Ground (b)

18. An appeal on ground (b) is that the matters described in the notice (use for agriculture and storage of a caravan) have not occurred. The burden of proof for legal grounds such as (b) and (c) is on the appellant, with the relevant test of the evidence being on the balance of probability.
19. A mobile home has been placed on the site that complies with the definition of a caravan under the Caravan Sites and Control of Development Act 1960. It is connected to a water supply and sewerage treatment. Therefore, the issue on this ground of appeal is whether, at the date the notice was issued, the caravan was being stored on the land.
20. The appellant asserts that the caravan provides welfare facilities to support the building works to construct stables that were granted planning permission adjacent and have begun construction, and the equestrian use of the land. As such, she argues that at the date the notice was issued, the caravan was being used for welfare purposes.
21. I note that the Council do not challenge the evidence of the appellant that the caravan was originally brought onto the land in early 2014 to be used for welfare purposes in connection with construction of the stables. However, their evidence is that the works of construction of the stables had ceased such that the caravan was no longer required for those purposes. In support of this contention, the Council have referred to a letter dated July 2018 from the owner that explained works on the stables had ceased and no future works were planned. This letter is not disputed by the appellant. This is significant because the letter indicates that the need for the caravan as a welfare unit in association with the construction works had ceased prior to the issue of the enforcement notice.
22. Even if the construction of the stables and other supporting infrastructure has not permanently ceased, it appears to me from all the evidence that it has been carried on intermittently for a long period of time. As such, I find that the

caravan has only been used for welfare purposes at those times that construction works are taking place and, for the remainder of the time, is only stored on the site. There is no convincing evidence from the appellant which leads me to a contrary view.

23. While I note additional works have taken place to provide for the storage of manure more recently, this does not alter my finding that storage of the caravan has also occurred.
24. I note that the planning permission for the stables also included the change of use of the land for the keeping of horses. Consequently, the appellant suggests that the land is now in a lawful equestrian use. It may be that the works to provide footings for the stables has implemented that permission. Nevertheless, there is no convincing evidence to suggest that the land had changed to that use in accordance with that planning permission at the date the notice was issued. As a result, the last lawful use of the land was for agriculture.
25. In conclusion, although I accept that the caravan may sometimes be used for welfare purposes, the evidence suggests, on the balance of probabilities, that at the time the notice was issued it was not used for these purposes. On that basis, I conclude that the use of the land for agriculture and storage has occurred as a matter of fact.
26. As such, I conclude that the appeal on ground (b) must fail.

The Appeal on Ground (c)

27. An appeal on ground (c) is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control.
28. The change of use of land, in this case from an agricultural use to a mixed use for agriculture and storage of a caravan, has resulted in a material change of use that comprises development as defined in section 55 of the Act. As such, it required planning permission.
29. The appellant's case is that the caravan is "permitted development" as a structure required temporarily in connection with and for the duration of operations being carried out on the land, in accordance with the planning permission available within Class A, Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This allows the provision of buildings and moveable structures in connection with and for the duration of operations being or to be carried out on that land.
30. Given my conclusions in ground (b) above, that at the date the notice was issued, the caravan was being stored on the land, it did not therefore fall within Class A, Part 4, Schedule 2 of the GPDO.
31. Since the development is not permitted development and it does not benefit from any other planning permission, I conclude that it constitutes a breach of planning control. The appeal on ground (c) therefore fails.

Formal Decision

32. It is directed that the enforcement notice be corrected by substituting the requirements at section 5 with the following:

- 1) Cease using the land for storage of a caravan.
- 2) Disconnect all services from the caravan and remove all associated connecting apparatus from the land.
- 3) Remove the caravan, demolish the steps and remove all paraphernalia including waste, rubbish and materials from the land.
- 4) Return the condition of the land to its former appearance.

33. Subject to the correction the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR