



Appeal Decision

Site visit made on 12 November 2019

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/A2525/C/19/3221019

**Damark, Ryefield Lane, Holbeach Fen, Holbeach, Spalding, Lincolnshire
PE12 8PS**

- 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 Andrew Lilley against an enforcement notice issued by South Holland District Council.
 - The enforcement notice, numbered SHCD.EN121, was issued on 17 December 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 agriculture to a use as a caravan site and associated access. The approximate locations of the caravans are shown on the attached plan no.2.
 - The requirements of the notice are:
 - (i) Cease all unauthorised use of the land as a caravan site; (ii) Remove all associated domestic structures and paraphernalia from the land associated with the unauthorised use; (iii) Remove all items being stored on the land that are not required in connection with its agricultural use, including the container; and (iv) Remove the unauthorised access to the land and return it to its previous condition.
 - The period for compliance with the requirements is six (6) calendar months after the notice takes effect for each requirement.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the following:
 - 1) the deletion of the steps required to comply with the notice 'The requirements of the notice' and substitution therefor by the following text:
 - (i) Cease all unauthorised use of the land as a caravan site;
 - (ii) Remove all associated domestic structures and paraphernalia from the land associated with the unauthorised use;
 - (iii) Remove all items being stored on the land that are not required in connection with its agricultural use, including the container;
 - (iv) Remove the unauthorised access to the land and return it to its previous condition
 - (v) Remove all caravans from the site
2. Subject to the above variations, the appeal is dismissed and the enforcement notice is upheld with the variation to the requirements of the notice.

Matters concerning the notice

3. The notice clearly requires the use of the land as a caravan site to cease. However, the requirements of the notice do not specifically seek the removal of the caravans from the site. It is open for me to vary the notice in accordance with my powers under section 176(1)(a) of the 1990 Act, subject to the essential test of injustice.
4. I consider the absence of the requirement to remove the caravans is an error which can be revised by adding another requirement to paragraph 5 of the notice "What you are required to do" to read "(v) *Remove all caravans from the site.*" To do so would not lead to injustice to any party since the notice will accomplish what the Council is seeking to achieve, which is to cease the residential use of the site and return the land to an agricultural use. These already form part of the requirements of the notice and consequently, the additional requirement to remove the caravans from the site would not make the notice more onerous. Furthermore, both the Council and the Appellant have had the chance to comment and therefore the variation of the notice can be made without injustice to either party.
5. The address of the site as stated on the enforcement notice is Damrack. However, the appellant has referred to the site as both Damark and Damrack. I observed the name plaque attached to the fence at the entrance to the site read 'Damrack' and it was agreed between the Appellant and the Council that this spelling is correct.
6. The single appellant of the enforcement notice owns a small section of the land along the west boundary which includes the 'associated access' and land upon which one caravan and two containers are sited.

Appeal - Ground (b)

7. An appeal on ground (b) is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. The appellant must therefore demonstrate that there has not been a change of use of the land from agricultural to a use as a caravan site and that the associated access has not been constructed.
8. The burden of proof in appeals on ground (b) falls to the appellant to show that the matters which appear to constitute the breach of planning control, have not occurred. The test of the evidence is on the balance of probability.
9. At the time of the site visit there were five caravans and three containers on site. I observed that a roadway into the site from Ryefield Lane had been constructed with hardcore to form a surface to enable vehicular access and 'facilitate' the use of part of the site. The appellant contests that the Land Registry plans show that an access to the land previously existed. Indeed, the plans do indicate a small gap along the road boundary in the approximate position as marked on the enforcement notice plan. However, photographic evidence taken from Google Street View in April 2009 and provided by the Council, shows no indication of any access onto the verge; the grass is undisturbed and a linear boundary with no breaks can be seen. Moreover, further representations made by interested parties in connection with this appeal maintain that a new 'second' access has been created at the site.

10. Furthermore, no substantive evidence has been provided by the appellant to demonstrate that the alleged use of the land as a caravan site has not occurred. As such it is considered that the material change of use, facilitated by the stationing of the caravans, as alleged in the enforcement notice, has occurred as a matter of fact.

Overall Conclusion

11. From the evidence before me, it is clear that the access incorporating the entrance and hardcore roadway into the site, has been created within the last ten years. It is also apparent that the access is part and parcel of the change of use of the land for agriculture to a use as a caravan site and that it has been constructed to facilitate this use.
12. I acknowledge that the Appellant owns only a small part of the site and that his interest is understandably limited to his plot. However, based on all I have seen and read, as a matter of fact and degree and on the balance of probability, I conclude that the alleged use has occurred and the appeal site is being used as a caravan site. The appeal on ground (b) fails.

Formal Decision

13. For the reasons given above, I conclude that the appeal should not succeed. The appeal is dismissed and the enforcement notice upheld with a variation to the requirements of the notice.

S Hanson

INSPECTOR