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## Appeal Decision

Site visit made on 12 November 2019

**by Stephen Brown MA(Cantab) DipArch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17<sup>th</sup> January 2020**

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**Appeal Ref: APP/Y2620/C/19/3224182**

**Land at 17 Rollesby Way, Happisburgh NR12 0QJ**

- 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 by Michelle Brooks against an enforcement notice issued by North Norfolk District Council.
  - The enforcement notice, ref. ENF/18/0068, was issued on 1 February 2019.
  - The breach of planning control alleged in the notice is the unauthorised siting of a mobile home on agricultural/vacant land for the purposes of holiday/residential occupation.
  - The requirements of the notice are to
    - (i) Cease all residential and holiday use of the Land.
    - (ii) Permanently remove the Winnebago caravan from the Land in a legal and responsible manner.
  - The periods for compliance with the requirements are:
    - (i) Six months.
    - (ii) Six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) of the Town and Country Planning Act 1990 as amended. 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 177(5) of the Act as amended do not fall to be considered.
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### Decision

1. I direct that the enforcement notice be varied by:  
DELETION of the words '*Winnebago caravan*' from Requirement (ii) of the enforcement notice; and,  
SUBSTITUTION of the words '*motorised caravan*'.
2. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

### Preliminary matters

3. Requirement (ii) refers to a '*Winnebago*' caravan sited on the land. This is a proprietary manufacturer's name, and I noted that the vehicle I saw was by another manufacturer. For the sake of accuracy and clarity I intend to vary the requirement to refer to a '*motorised caravan*'. I do not consider any party to be substantially prejudiced by this change.

## **Background matters**

4. The appeal site lies in open countryside to the south-east of the village of Happisburgh, and a very short distance from the sea coast to the east. It is accessible by an unmade track. There are timber post and rail fences along the front and south-western boundaries. To the north-east the neighbouring plots are overgrown with trees and undergrowth and have clearly not been used for many years.
5. The site is one of a number of plots that I understand were sold as leisure plots in the 1930s. Some have dwellings on them and are clearly occupied on a permanent basis. I also understand there are fewer plots than there were originally, and these have returned to agricultural land.
6. I saw that the motorised caravan stands close to the site frontage. It is a relatively new vehicle, and I saw it is equipped with photo-voltaic solar panels and there is a gas container sited externally.
7. In addition to the motor caravan on the site I saw there was a timber shed and a dilapidated touring caravan. These items are not subject of the notice in this appeal.

## **The appeal on ground (e)**

8. This ground is that copies of the enforcement notice were not served as required by s.172 of the Act. The notice was served on Michelle Brooks and John Brooks as occupiers of the appeal site, and on the late Mrs Coral Khanfri the registered site owner. I understand that Mrs Khanfri died in 2010, and that her estate is still being handled by her executors. Mr Brooks is the late Mrs Khanfri's nephew.
9. The appellant argues that the Council served the notice – which he refers to as 'the enforcement order' – on Mr Brian Brooks, who is unknown to the site occupiers or the executors, and that this invalidates the enforcement notice.
10. S.172(2) requires a copy of an enforcement notice to be served – (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
11. I have seen no record of the notice being served on Brian Brooks, and it appears to me that the Council have complied with the s.172 requirements as regards the owner and occupiers. There is no suggestion that any others have any interest in the land. Furthermore, it is self-evident that those with an interest in the land have had the opportunity to make this appeal. I do not consider any party has suffered substantial prejudice by the Council's actions in serving the notice. The appeal on ground (e) therefore fails.

## **The appeal on ground (d)**

12. This ground is that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. In a case such as this the burden of proof is on the appellant to show that on the balance of probabilities the development enforced against has subsisted continuously for a period of 10 or more years prior to issue of the notice.

13. A number of statutory declarations have been put forward to support the contention that the land has been occupied continuously for the requisite period. Those from the appellant and from John Brooks refer to use of the caravan and shed on Plots 15 and 17 occupied by Mrs Khanfri and various members of her family since 1999. They do not claim to live permanently on Plots 15 and 17, but to have stationed mobile homes there and occupied them residentially for both long and short periods. However, an e-mail from the appellant to the Inspectorate dated 1 March 2019 says that she and her husband are otherwise homeless and are living on the site.
14. Statutory declarations from others living on Rollesby Way also refer to Plots 15 and 17, occupation of a caravan and shed since 1999, and to the Ordnance Survey plan.
15. Extensive material has been put forward to the effect that the caravan and shed enforced against in 2000 remain on the site but are actually on plot 15 rather than plot 17 that is subject of the notice. However, those elements are not of direct concern in this appeal, and the plan attached to the notice identifies the land where the motorised caravan is situated sufficiently accurately for the appellant to know what is being enforced against, and to argue that it is the land she occupies.
16. All the statutory declarations refer to a piece of land identified on an Ordnance Survey plan put in by the appellant, and which is referred to as Plots 15 and 17. They also refer to occupation of a caravan and shed. However, apart from somewhat vague references to occupation of mobile homes there is little to substantiate the presence or use of the motorised caravan.
17. In an appeal on the legal ground (d), with matters of fact in dispute, it is settled law that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
18. I find the various statutory declarations to be remarkably unspecific in identification of the appeal site - referring instead to Plots 15 and 17 - and to an Ordnance survey plan put in by the appellant, rather than the plan attached to the notice.
19. There is much reference to occupation of the caravan and shed, but it is by no means clear whether these are the other items I saw on the site - which did not appear to have been suitable for occupation for very many years - or possibly to the items enforced against in 2000. If the latter, these remain subject to that notice, which is still in force.
20. Overall, I find the evidence put forward to be far from precise, and highly ambiguous in terms of definition of the site and of the accommodation thereon. I do not consider the appellant has demonstrated that on the balance of probabilities the use enforced against has subsisted continuously for a period of 10 or more years prior to issue of the enforcement notice on 1 February 2019. The appeal on ground (d) therefore fails.

## **Conclusions**

21. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

*Stephen Brown*

INSPECTOR