



Appeal Decision

Site visit made on 22 October 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/E2734/C/19/3222295

The land situate and comprising field at 418221 449963 to the north of the Weston Moor Road, Clifton LS1 2ND, North Yorkshire

- 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 Christopher Hatton against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice was issued on 8 January 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land for the stationing of a caravan for residential purposes.
- The requirements of the notice are:
 - (i) Cease the use of the Land for stationing a caravan for residential occupation;
 - (ii) Remove all domestic items from the Land associated with residential occupation, including but not limited to the following items:
 - a. Tourer caravan and associated tanks, barrels and containers which provide or enable residential amenities to the caravan;
 - b. With the exception of the post and wire fencing located around the boundary of the site, all fencing including posts and panelling materials;
 - c. All wooden outbuildings;
 - d. Gravel driveway and mound of gravel stored on the Land;
 - e. All planting border boxes;
 - f. All garden seating furniture;
 - g. All gas bottles;
 - h. All wooden pallets;
 - i. Piles of bricks, debris and bags of sand;
 - j. Wood burning stove;
 - k. Large plastic water tanks and associated wooden mounts;
 - l. Toilet and associated plumbing contained in the outbuildings;
 - m. All filing cabinets;
 - n. All tyres;
 - o. All plastic storage containers;
 - p. Sunken plastic waste tank and associated pipes connecting to toilet
 - q. Children's play equipment (A-frame metal swing, metal football goal post);
 - r. All trailers (2 small trailers, 1 large trailer);
 - s. Corrugated plastic sheeting and woodchip sheeting;
 - t. Post box and associated metal post to which it is attached.
 - u. All fir trees;
 - v. Sewerage point, concrete basin and standpipe;
 - w. Drinking water point and standpipe;
 - x. Waste water point, gravel bed, concrete basin and drainage equipment;
 - y. Fire point and associated wooden board, gravel bed, metal bucket containing sand, first aid kit and fire extinguisher;
 - z. Large water tanks and associated metal and wooden enclosures and drainage equipment;

- (iii) Reinstate any resultant excavations caused by the removal of the above items with top soil and grass seed.
- The period for compliance with the requirements is:
 - (a) Within two months from the date the notice takes effect cease the use of the land for stationary residential caravan as required by item 5(i) and remove items 5(ii)(a) from the Land.
 - (b) Within four months from the date the notice takes effect remove items 5(ii)(b) – 5(ii)(z) from the Land; and
 - (c) Within six months from the date the notice takes effect reinstate the Land in accordance with 5(iii).
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation.

FORMAL DECISION

1. It is directed that the enforcement notice is varied by the deletion of requirements v – z. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matter

2. Whilst ground (f) has not been pleaded, the appellant nevertheless makes submissions on the matter and therefore I have addressed them as though that ground was pleaded. Both main parties were given the opportunity to comment on this matter and any comments received have been taken into account.

The appeal on ground (c)

3. In this appeal, the onus is upon the appellant to show that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. Whilst I understand that the appellant may have since complied with the requirements of the notice, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
4. The notice alleged the stationing and use of a caravan for residential purposes. It is evident from the Council's statement that the allegation relates to use for second home/holiday purposes. Whether the caravan was occupied permanently or on an occasional basis both constitute residential use and I have considered the appeal on this basis.
5. The appellant does not dispute that a caravan was stationed on the land albeit he stated that the caravan was first brought onto the land in October 2017 and the Council's photographs show the caravan on the land in May 2017. Notwithstanding the precise date when the caravan was brought onto the land, the appellant's contention is that the caravan has been occupied on a temporary basis whilst works have been carried out to facilitate the use of the land as a caravan site with the benefit of permitted development rights, namely planning permission granted by Article (3) Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
6. The appellant also argues that plant and equipment needed to construct facilities required for the use as a caravan site are permitted under Part 4 Class A of the GPDO. This states that the provision on land of buildings, moveable

structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land is permitted development. However, it is set out in A.1.(b) that development is not permitted if planning permission is required for those operations but is not granted or deemed to be granted.

7. Part 5, Class A of the GPDO grants planning permission for the use of land, other than a building, as a caravan site in circumstances referred to in paragraph A.2. The relevant part of paragraph A.2 says the circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required).
8. The "1960 Act" is the Caravan Sites and Control of Development Act 1960 and the relevant paragraph in Schedule 1 of that Act is paragraph 5. The circumstances referred to in paragraph 5 are that there is in force a certificate issued under this paragraph by an exempted organisation and that not more than five caravans are at the time stationed for the purposes of human habitation on the land to which the certificate relates.
9. On 6 October 2017, the appellant obtained a certificate under paragraph 5 of Schedule 1 of the 1960 Act from the Freedom Camping Club, as an exempted organisation. The appellant stated that under the terms of the certificate, touring caravans would be allowed to visit the site for not more than 28 consecutive days.
10. The Council stated that they have visited the land 14 times over the last 2.5 years between May 2017 and February 2019 and the caravan has always been present. Further, I note comments from a third party who lives approximately 1.5 miles from the site who stated that they have driven past the land almost every day for the last 2 years and only 1 caravan has been on the land and, during that 2-year period that caravan was never not on the land. On this basis and as the appellant does not dispute that the caravan has been stationed on the land, its use has not been in accordance with Part 5 Class A of the GPDO.
11. Schedule 2, Part 5, Class B of the GPDO grants permission for development required by the conditions of a site licence for the time being in force under the 1960 Act. Notwithstanding third party comments about the intention of Part 5 Class B, it is not for me in the context of an appeal made under section 174 of the Act to determine the intention of legislation, this is a matter for the courts. The certificate provides an exemption from the requirement to obtain a licence, it is not a licence itself. Accordingly, any operational development carried out in order to obtain a certificate was not permitted under Class B. Consequently, the siting of the caravan and any other temporary plant or equipment, as alleged, is not permitted development under Part 4 Class A of the GPDO.
12. The photographs attached to the Council statement at Appendix 3, taken between May 2017 and February 2019 show the caravan in situ, fenced off from the main part of the land in a well maintained corner surrounded by areas of ornamental planting, domestic paraphernalia including a washing line, garden seating, children's play equipment, small outbuildings one housing a toilet connected to a septic tank and a post box at the entrance to the land. The fence clearly serves to provide shelter for the caravan and creates a semi-private amenity space for the appellant and is integral and part and parcel of the residential use of the land. The photographs clearly show the land

to have an appearance akin to a residential garden and all of the extra accretions and paraphernalia are clearly intended to support residential occupation which consists, at least, as use as a second home/holiday use. As such I conclude that a material change of use consisting of the stationing of a caravan for residential purposes has occurred.

13. With regard to the access track, the appellant stated that this has been there for over 20 years but acknowledged that an access track has been created with porous stone chippings and considers that such work constitutes maintenance and does not require planning permission. Whilst the submitted Google aerial images dated 2009 show a gateway to the land, the track is not visible. I note that the Council does not require the stopping up of the access. On the basis of the evidence before me, the appellant has not shown that the works to the track constitute maintenance and I am not persuaded that the works to form a surfaced track, were not operational development by virtue of being de minimis.
14. Overall, on the basis of the evidence before me I conclude that the appellant has failed to prove, on the balance of probabilities, that the matters alleged in the notice do not constitute a breach of planning control. The appeal on ground (c) therefore fails.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use of the Land for the stationing of a caravan for residential occupation to cease and the removal of all items associated with the residential occupation. I find the purpose is to remedy the breach of planning control.
16. The appellant stated of the items listed in the requirements of the notice, that none related to the residential use but are connected with the permitted use under Part 5 of the GPDO. Further, that a number of items listed in the requirements of the notice are either not development or constitute permitted development.
17. However, the courts have held that an enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own may not constitute development or be permitted development, so that the land is restored to its condition before the change of use took place.
18. In respect of those items listed a – u in the requirements, for the reasons given above and in the absence of substantive contrary evidence, I consider they were carried out to facilitate the alleged unauthorised change of use, being part and parcel of that change of use and ancillary and integral to it. Consequently, it is not excessive to require the cessation of the use or the removal of those items used in connection with the use.
19. The appellant's submissions on this ground are unclear and my assessment is based largely on my own site observations taking into account that a number of the items listed in the requirements of the notice had been removed prior to my visit.

20. The residential caravan use appears to me to be largely contained to the broadly north west corner of the land, enclosed by fencing. At my visit I observed that the sewerage point, drinking water and standpipe, waste water point, fire point and water tanks are located away from the caravan in the larger area of the land, much further away than would be expected for such facilities if provided solely for that use. I accept that they may have been used in connection with the residential caravan use, but given the location and that they are marked, I consider it unlikely that their provision would have been directly associated with that purpose.
21. I also accept that there is no requirement to provide these facilities for the caravan club use, but in my view, they would enhance the site for caravan users. To my mind, it seems most probable that given the type of facilities and their location, they were provided as part and parcel of the caravan club use being developed and are not directly associated with the residential caravan use. Consequently, as they have not been provided to facilitate the use alleged in the notice, it is excessive to require their removal. Whilst they may constitute a breach of planning control it is open to the Council to pursue these separately.
22. Consequently, the appeal on ground (f) therefore succeeds to a limited extent as set out in my formal decision.
23. It is unclear from the evidence before me whether a certificate has been granted in respect of the use of the land as a caravan site, the last expiring on 5 October 2019. Nevertheless, the courts have held that the requirements of an enforcement notice must not purport to prevent an appellant from doing something he or she is entitled to do without planning permission. This is the case whether relying on lawful use rights or rights of reversion; s57(4) of the Act, the GPDO, The Town and Country Planning (Use Classes) Order 1987 rights, or any of the exceptions from the definitions of development. In this case the requirements of the enforcement notice do not prevent the appellant from exercising any permitted development rights which exist in respect of the Land, including those under Part 5 Class A as applicable.

Other Matters

24. The appellant's misgivings about how the Council investigated the matter, including not serving a Planning Contravention Notice (PCN), have no bearing on my assessment of the planning merits of the development. This is because the Council are not required to serve a PCN before issuing an enforcement notice.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Felicity Thompson

INSPECTOR