



Appeal Decision

Site visit made on 6 January 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2020

Appeal Ref: APP/P1045/C/19/3233212

Land to East of Kings Lot Wood, Longway Bank, Whatstandwell, Derbyshire.

- 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 Lee Coxon against an enforcement notice issued by Derbyshire Dales District Council.
 - The enforcement notice was issued on 12 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the stationing of a caravan on the land for the purposes of human habitation.
 - The requirements of the notice are permanently remove the caravan from the land edged red on the attached plan.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the grounds set out in section 174(2)[b] and [c] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Application for costs

2. An application for costs was made by Derbyshire Dales District Council against Mr Lee Coxon. This application is the subject of a separate Decision.

Ground (b)

3. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. Under ground (b), the point in question is therefore whether the use alleged to be taking place on site, i.e. the stationing of a caravan on the land for the purposes of human habitation, was, as a matter of fact, occurring at the time the notice was issued. Under this ground the appellant asserts that nobody is inhabiting the caravan and that it is there for agricultural use.
4. The onus of proof is on Mr Lee Coxon to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities. The Council's Statement of Case identifies the nature of a complaint in relation to the stationing of the caravan was a washing line being erected and associated generator running at night. The appellant disputes that there was a washing line erected on site or a generator running at night and asserts that the complainant could have confused a petrol water pump with a generator.

5. The Council goes on to state that following a visit to the site, it was noted by the Council Enforcement Officer that the caravan had not been modified in any way and was capable of being, and appeared at that time to be used for human habitation. The Council has provided a signed witness statement (Witness Statement) by an enforcement planning officer at the Council who visited the site on 2 April 2019 and states 'The purpose of my visit was to inspect the land to see if there was a static caravan on the land as had been reported by a member of the public. There was, but it didn't appear to be occupied.'
6. At the time of my visit I noted that the caravan contained a living room area; kitchen area, bedrooms and a shower room/WC. However, it was clearly not occupied for residential purposes at the time of my visit. There were no beds in the bedrooms and was no apparent water supply or electricity, though there was a gas cannister and gas fire (which was not on at the time of my visit). I saw various tools stored within the caravan, as well as bales of hay. As such, from my inspection I do not consider that the caravan has been in permanent residential use for a considerable period of time.
7. The Council advise that the appellant stated to officers that the caravan was used for recreational, not agricultural purposes. Although the Council issued a Planning Contravention Notice (PCN) no response from the appellant was provided. The signed Witness Statement notes that during a meeting with officers on 15 April 2019 the appellant explained that the caravan is to be used for recreation purposes by him and his family when they visit this land.
8. The accuracy of the Witness Statement is questioned by the appellant. However, given the potentially significant consequences of wilfully stating anything which is known to be false in the Statement, I consider that substantial weight can be afforded to this element of it. The accuracy of peripheral matters such as the identify of the person accompanying the appellant during the meeting is of less significance in this regard.
9. The appellant states that the claim the site has and continues to be used for recreational purposes is highly subjective and untrue. I have had regard to the appellant's evidence in this respect, however, I am unable to afford it anything more than very limited weight, particularly in light of the appellant's failure to respond to the Planning Contravention Notice, which sought to secure further information regarding the siting of the caravan.
10. Nevertheless, whilst there is conflicting evidence as to whether the caravan is used for recreational or agricultural purposes, the breach identified in the enforcement notice is the use of the caravan for the purposes of human habitation. In my view, human habitation goes beyond the use of a site for recreational purposes and indicates that the occupant of the caravan is using it for every day living.
11. Thus, for the reasons given above, and taking into account the information provided by the appellant, the Council and my inspection of the site, on the balance of probabilities, the use alleged to be taking place on site, i.e. the stationing of a caravan on the land for the purposes of human habitation, was not occurring at the time the notice was issued.
12. I have considered whether I can correct the allegation in the notice to address the breach of planning control that has occurred; however, it would not be possible to do so without causing injustice to the appellant. Accordingly, the

appeal on ground (b) succeeds. The appeal under ground (c) does not therefore fall to be considered.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed.

M Savage

INSPECTOR