



Appeal Decision

Hearing held on 28 January 2020

Site visit made on 28 January 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2020

Appeal Ref: APP/U2370/C/18/3205129

Helmsdeep, Long Lane, Barnacre, Preston, Lancashire PR3 1RN

- 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 Mrs Susan Gutierrez-Inostroza against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice was issued on 9 May 2018.
- The breach of planning control as alleged in the notice is the material change of use of the land from mixed use for agriculture and wind turbine energy generation through the erection of one wind turbine in accordance with planning permission 11/00286/FUL to a mixed use comprising agriculture, wind turbine generation through the erection of one wind turbine in accordance with planning permission 11/00286/FUL, the siting of a container for storage purposes (in the approximate position marked A on the attached plan), and the siting of a mobile home/static caravan for residential purposes (in the approximate position marked B on the attached plan), together with the installation of (i) a wooden shed (in the approximate position marked C on the attached plan) and (ii) a septic tank (in the approximate position marked D on the attached plan), both (i) and (ii) associated with the aforesaid siting of a mobile home/static caravan for residential purposes.
- The requirements of the notice are:
 - i. Cease the use of the land for the siting of a container for storage purposes.
 - ii. Remove the container (in the approximate position marked A on the attached plan) from the land in its entirety.
 - iii. Cease the use of the land for the siting of a mobile home/static caravan for residential purposes.
 - iv. Remove the mobile home/static caravan (in the approximate position marked B on the attached plan) from the Land in its entirety.
 - v. Remove the wooden shed (in the approximate position marked C on the attached plan) from the land in its entirety.
 - vi. Remove the septic tank (in the approximate position marked D on the attached plan) from the land in its entirety.
 - vii. Remove the rotary washing line and all domestic apparatus and paraphernalia including garden furniture and plant pots from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with variations.

Preliminary Matters

1. At the outset of the Inquiry, the Council indicated that it was not seeking to pursue the enforcement notice in respect of requirements v, vi and vii.

Therefore, the appeal relates to the siting of a container for storage purposes and the siting of a mobile home/static caravan for residential purposes. The enforcement notice should be varied accordingly.

The appeal on ground (c)

2. The ground of appeal is that the matter alleged does not constitute a breach of planning control. With respect to the container it is the appellant's contention that its siting for storage purposes is ancillary to the use of the land for agricultural purposes and therefore no breach has occurred. In cases such as this it needs to be clearly shown that there is a functional dependence between the agricultural use of the land and the use of the container.
3. The appellant has presented little, if any, clear evidence with reference to the functional linkage between the storage needs of the land in question and the container of this size. It is also relevant that the site already has the benefit of a substantial agricultural barn which is used for a range of storage activities, including machinery, hay and other paraphernalia used in the operation of the land. The barn was the subject of a previous appeal¹ where its use for storage purposes was fully considered. It seems to me that the barn provides sufficient storage space for the site.
4. Furthermore, there is a distinct lack of evidence regarding the functional use of the appeal site. It is my understanding that it is used for alpacas and, indeed at my site visit I observed a number of alpacas in the barn, but other than that there is no actual evidence of the extent of the use of the land for alpacas and the detailed nature of agricultural activity that is taking place. Given this lack of evidence and the presence of an existing agricultural barn, it is unclear why the container is functionally dependent on the use of the site and why and how it is ancillary. The appellant contends that the container provides secure storage for items, but I see no clear justification why such secure storage facility could not be provided inside the existing barn. Whilst there may be some link between the use of the land and the items stored in the storage container there is insufficient evidence that the use of the container is directly related to the main use of the site. As a matter of fact and degree there is insufficient evidence for me to come to a firm conclusion that the container is incidental to the use of the site.
5. In her oral evidence, the appellant also referred to permitted development rights by virtue of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO); however, it was not specified which particular rights were being referred to. In any case, it was agreed that no prior approval has been secured for the container.
6. The appellant contends that the siting of the mobile home/static caravan is ancillary or incidental to the residential use of the shed. Whether or not this is the case is a matter of fact and degree.
7. There is insufficient evidence before me to show that the mobile home is indeed functionally dependent upon the shed and it is clear to me that the mobile home has itself being designed to be used as an independent unit of accommodation. As such, it is possible for the mobile home to be occupied

¹ APP/U2370/W/15/3137151

without there being any dependence on the shed whatsoever. Therefore, the appellant has not satisfactorily demonstrated any functional dependence between the two.

8. It also appears to me that the appellant has accepted that the mobile home is used for a range of purposes including sleeping, cooking, washing, office and other domestic purposes, but the shed provides a second bedroom with en suite bathroom facilities. The mobile home is also much larger than the shed and can accommodate more people. Therefore, rather than the mobile home being functionally subordinate to the shed, it appears that the reverse is, in fact the case – the shed being functionally ancillary or incidental to the use of the mobile home.
9. Case law² indicates that additions to normal domestic living accommodation such as bedrooms would not be expected to be regarded as incidental to the enjoyment of a dwellinghouse because they are generally an integral part of ordinary residential use as a dwellinghouse. Therefore, it would be unusual to have accommodation such as a bedroom as incidental to a dwellinghouse. The evidence presented in this appeal does not satisfactorily justify why the bedrooms are incidental to one another.
10. The appellant has accepted that there have been periods when the living arrangements of the shed and mobile home have been fluid – for example times when the caravan would accommodate most family members whereas the shed would accommodate the appellant's mother. This does not indicate a situation where the mobile home is being used for purposes incidental to the shed.
11. Therefore, I conclude that the appeal on ground (c) must fail.

The appeal on ground (d)

12. The ground of appeal is that at the date when the notice was served, no enforcement action could be taken. In this respect, 10 years continuous use starting from the date of the breach is required, so that the material date is 9 May 2008. The appellant's evidence is that the container was moved onto the site in May 2010 and consequently it has not been on site for the material period and is not immune from enforcement action by the Council.
13. The evidence demonstrates that a holiday caravan has been on site since 2005, but it is not contended that this has been used for residential purposes. The appellant also confirmed in her oral evidence that this particular caravan is not relevant to the immunity ground (d) case. The residential use of the mobile home started in May 2011 and, therefore, the use of the mobile home for residential purposes has not continued for a period in excess of ten years and as such cannot be immune from the Council's enforcement action.
14. The appeal on ground (d) must fail.

The appeal on ground (a)

15. The ground of appeal is that planning permission should be granted. Although the appellant has pursued an appeal on ground (a) she accepted at the Inquiry that no evidence had been presented to support this particular ground. Case

² Peche d'Or Investments v SSE [1996] JPL 311 and Rambridge v SSE & East Hertfordshire DC (QBD 22.11.96 CO-593-96)

law³ indicates that the burden of proof is on the appellant and in the absence of evidence regarding why planning permission should be granted for the matters which appear to constitute a breach of planning control, the burden of proof has not been discharged.

16. The Council has presented evidence which sets out why permission should be refused in the light of the development plan and other material considerations and this has not been challenged by the appellant. In the absence of evidence from the appellant presenting why permission should be granted in the light of the Council's decision to pursue enforcement action, the appeal on ground (a) fails.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

18. It is directed that the enforcement notice shall be varied by:

- (a) the deletion from paragraph 3 of the words "together with the installation of (i) a wooden shed (in the approximate position marked C on the attached plan) and (ii) a septic tank (in the approximate position marked D on the attached plan), both (i) and (ii) associated with the aforesaid siting of a mobile home/static caravan for residential purposes; and
- (b) the deletion from paragraph 5 of the words
 - (v) Remove the wooden shed (in the approximate position marked C on the attached plan) from the Land in its entirety.
 - (vi) Remove the septic tank (in the approximate position marked D on the attached plan) from the Land in its entirety.
 - (vii) Remove the rotary washing line and all domestic apparatus and paraphernalia including garden furniture and plant pots from the Land.

19. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR

³ Ravendale Ltd v SSCLG & Waltham Forest LBC [2016] EWHC 2374 (Admin)

APPEARANCES

FOR THE APPELLANT:

Susan Gutierrez-Inostroza

FOR THE LOCAL PLANNING AUTHORITY:

Killian Garvey of Counsel

Andrew Cowley