



Appeal Decisions

Site visit made on 10 February 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2020

Appeal A Ref: APP/C1570/C/18/3209625

Daisy Mays Farm, Hall Road, Elsenham CM22 6DN

- 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 Ian Mills against an enforcement notice issued by Uttlesford District Council.
- The enforcement notice was issued on 17 July 2018.
- The breach of planning control as alleged in the notice is without planning permission: The material change of use of land from agricultural land only to a mixed use of agricultural land and residential accommodation, following the stationing of a mobile home and caravan upon the site.
- The requirements of the notice are:
 - Cease the residential use of the land
 - Remove the mobile home and caravans from the site
 - Remove all resultant debris from the site.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Appeal B Ref: APP/C1570/C/18/3209628

Daisy Mays Farm, Hall Road, Elsenham CM22 6DN

- 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 Act).
- The appeal is made by Mr Ian Mills against an enforcement notice issued by Uttlesford District Council.
- The enforcement notice was issued on 17 July 2018.
- The breach of planning control as alleged in the notice is without planning permission: The siting of storage containers and a yurt on agricultural land.
- The requirements of the notice are:
 - Remove the storage containers from the site;
 - Remove the yurt from the site; and
 - Remove all resultant debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Council served two enforcement notices on Daisy Mays Farm, Hall Road Elsenham. They are both subject of appeals and both enforcement notices were

- submitted with both appeal forms. Both appeals have been made under grounds (b), (c) and (f). Only one appeal form includes a ground (g) appeal.
2. It is unclear from the appeal forms as to which of the enforcement notices they relate. Both appeal forms make reference to the development alleged in both enforcement notices under grounds (b) and (c). The form including both ground (f) and (g) appeal I have taken as appeal A and refers to caravans within those grounds of appeal but does not refer to storage containers or yurt in either. The form submitted with the reference number of appeal B refers to the development alleged in both notices in the ground (f) appeal and does not include a ground (g) appeal. Neither enforcement notice has a reference number provided by the Council and the covering letters have the same reference number.
 3. In their Statements both the appellant and Council have dealt with the storage containers and yurt, but not the mobile home or caravan in the ground (g) appeal, such that the Council would not be prejudiced were I to deal with both appeals as if they had been made on ground (g). Taking all of that into account, I have dealt with the appeals on the basis that both include a ground (g) appeal.
 4. I shall deal with both enforcement notices together.
 5. My attention has been drawn to two planning permissions under the prior notification procedure in Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for an agricultural building (reference UTT/15/1081/AG) and roadway (UTT/15/1082/AG). These are subject to a number of conditions, including that the development must be carried out within a period of 5 years from the date on which approval was given. The Council have suggested that, as the permissions were confirmed in August 2015, the five year period would end in August 2020. I see no reason to disagree with that timescale. The building currently comprises the foundations and uprights constructed in metal and timber.

The Enforcement Notices

6. Under Section 176(1) of the Act, I have the power to correct any defect, error or misdescription in the enforcement notice, provided that the correction will not cause injustice to the appellant or the local planning authority.
7. The plans attached to the notices outline the whole of Daisy Mays Farm in red and do not identify where the mobile home, caravan, storage containers and yurt are located. The mobile home is located in the bottom field that is closest to the access on Hall Road. The containers and yurt are located in the top field furthest from Hall Road.
8. The mobile home originally sited on the land has since been removed and replaced with a twin unit caravan. I understand that both fell under the definition of a caravan within the Caravan Sites and Control of Development Act 1960 such that they would both be subject of the enforcement notice in appeal A. I consider that referring to it as a mobile home on the enforcement notice is clear and that the appellant understood to what it related, such that I do not need to alter the description on that notice.

9. However, the description of the breach refers to a single caravan, but the requirements refer to caravans plural. I need to correct the notice, using my powers under Section 176(1) of the Act, such that the requirements are consistent with the breach described.
10. A previous appeal decision¹ quashed the previous enforcement notice as that did not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. That referred to a change of use of land for the siting of mobile home, caravan, yurt and shipping container on the land. It is clear that the Inspector's concerns principally related to the reference to the change of use of the land for siting of mobile home and caravan. The Council have addressed this in serving the notice in appeal A. However, that Inspector also referred to defects in the previous notice in terms of how it addressed the storage containers and yurt.
11. The breach alleged in the enforcement notice subject of appeal B refers to the siting of storage containers and a yurt on agricultural land and the requirements are clear in requiring the removal of the storage containers and yurt, and removal of all resultant debris from the site. Nevertheless, the notice does not expressly state whether the Council consider that is a use of land or a building operation.
12. Under the reasons for issuing the notice, the Council do not refer to a material change of use and refer to the breach having occurred within the last four years. As such, it is clear that they consider the siting of the storage containers and yurt comprise building operations to be used for agricultural purposes. The appellant has addressed these matters during the course of the appeal, so it is clear that they understand the purpose of the notice.
13. Taking these factors into account, I consider that the description of development within the notice under appeal B is essentially clear in that it relates to operational development. As such, it does not need to refer to the use of the land. Consequently, I will correct the notice such that it does not refer to the use of the land within the description of the breach.

The Appeals on Ground (b)

14. An appeal on this ground is that the matters described in the notice had not occurred and the relevant date is the date the notice was issued. For this ground of appeal, the test of the evidence is on the balance of probability and the burden of proof is on the appellant.
15. The appellant suggests that there has not been a change of use of the land as the residential use within the mobile home (and caravan) referred to in the notice supports the agricultural use of the land. Irrespective of whether the occupation supports the agricultural use, the residential occupation is a separate use in its own right.
16. The caravan that was occupied as part of the residential use has been removed since the enforcement notice was issued. Nevertheless, it was in place when the notice was issued so should be included within the breach alleged on the notice.

¹ Appeal reference APP/C1570/C/17/3180638

17. It is also suggested that the mobile home is occupied to support the construction of the agricultural building. If that is the case, the appellant suggests that it would have planning permission by virtue of Class A, Part 5, Schedule 2 of the GPDO during the construction of the agricultural building. However, that would be better considered under ground (c).
18. As a result, the breach described in appeal A has occurred.
19. There is no dispute that the shipping containers and yurt have been brought onto the land. I note that the appellant suggests that they are used for storage of materials and tools for the construction of the agricultural building, so do not constitute a breach of planning control as he asserts that they have planning permission by virtue of Class A, Part 4, Schedule 2 of the GPDO. However, that is better considered under the ground (c) appeal.
20. As a result, the breach described in appeal B has also occurred.
21. For these reasons, I conclude that the appeals under ground (b) should fail.

The Appeals on Ground (c)

22. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. Again, the relevant date is the date the notice was served. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.

Appeal A

23. I have concluded in the ground (b) appeal that the residential use is separate from the agricultural use. Residential use in its nature, character and effects is a significantly different land use than agriculture. Consequently, the change from an agricultural use to a mixed use of the land for agriculture and for residential accommodation, following the stationing of a mobile home and caravan, constitutes a material change of use, and hence ‘development’ within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the mixed agricultural and residential use of the land.
24. The appellant suggests that the residential use within the mobile home (and caravan) referred to in the notice supports the construction of the agricultural building and, therefore, has planning permission by virtue of Class A, Part 5, Schedule 2 of the GPDO. This enables the use of land as a caravan site in certain circumstances, that include the accommodation of workers employed in carrying out building or engineering operations, or for housing temporary seasonal workers for agriculture.
25. In addition to managing the farm I understand that the residential occupant of the mobile home also manages the building and engineering operations in constructing the agricultural building and roadway works on the site. The construction works have been taking place over a long period of time and I understand that the mobile home and caravan have been residentially occupied on the land for that whole period. It thus seems likely that there have been significant periods when the building works have not been taking place. Consequently, at times where no work was taking place on the agricultural

building, the breach of planning control would have been taking place. There is no convincing evidence before me to demonstrate otherwise.

26. Furthermore, given that there has been continuous residential occupation for a number of years, it is clear that it is not just occupied on a temporary seasonal basis as required by Class A, Part 5, Schedule 2 of the GPDO. In addition, that class of the GPDO does not enable the use for a dual purpose, i.e. accommodation of workers employed in carrying out building or engineering operations and for housing temporary seasonal workers for agriculture.
27. As set out above, the onus is on the appellant to demonstrate that the development does not constitute a breach of planning control. Taking all of the above into account, on balance I conclude that they have failed to demonstrate that the residential element of the mixed use complies with the requirements of Class A, Part 5, Schedule 2 of the GPDO. As a result, the mixed use of the land for agriculture and residential occupation comprises a breach of planning control.

Appeal B

28. The Council suggests that the storage containers and yurt are buildings such that they comprise operational development. No planning permission has been sought from or granted by the Council for the siting of the storage containers or yurt. Taking account of well-established case law, there are three tests as to whether a structure comprises a building: size; permanence and physical attachment.
29. I visited immediately after storm Ciara and high winds were continuing during my visit. The yurt was damaged, which may have been as a result of the storm. The yurt has clearly been in the same location for a number of years, such that it has a significant degree of permanence, although it may be possible to move it. It is also a substantial, albeit relatively small, structure, with a timber frame on a timber base. It does not appear to be physically attached to the ground but is held down by its own weight. Nevertheless, for these reasons the yurt should be considered a building. Consequently, it constitutes "development" as defined by section 55 of the Act, and thereby requires planning permission.
30. Similarly, the storage containers are substantial structures that have been on the site for some time. They are also held down solely by their own weight. Nevertheless, their size, permanence and physical attachment is sufficient to conclude that they comprise buildings. Consequently, they also constitute "development" as defined by section 55 of the Act, and thereby require planning permission.
31. Class A, Part 4, Schedule 2 of the GPDO relates to the provision of temporary buildings and structures that are required in connection with and for the duration of operations being carried on the land. In order to benefit from that planning permission, the development would need to comply with those requirements on the date the enforcement notice was issued. However, the storage containers are located a substantial distance from the building and there is limited other storage at Daisy Mays Farm. Moreover, the appellant's submitted appeal forms suggest that the shipping containers are used ancillary to the agriculture and forestry use of the land. In addition, I note that the previous appeal decision refers to an argument made by the appellant that

they were used for agricultural purposes and they contained chickens and hay at that time. There is limited evidence that the use of the storage containers had changed by the time the enforcement notice was issued.

32. It therefore seems unlikely, on the balance of probability, that the storage containers solely contain materials and equipment associated with construction of the agricultural building and that they are primarily sited for that purpose.
33. For these reasons, the appellant has failed to demonstrate that, on balance, the storage containers comply with Class A, Part 4, Schedule 2 of the GPDO. Since no planning permission has been granted for the development the yurt and storage containers thereby constitute a breach of planning control.

Conclusion

34. For these reasons, I conclude that the appeals under ground (c) should fail.

The Appeals on Ground (f)

35. Appeals on this ground are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In these cases, the requirements seek to cease the residential use and remove the mobile home, storage containers and yurt, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
36. The appellant suggests that if the mobile home, storage containers and yurt have planning permission granted by the GPDO, they should not be required to be removed. However, I have concluded there is no planning permission for them. I note that the appellant suggests that the storage containers and yurt are chattels used for storage and welfare facilities and ancillary to the use of the land such that they suggest these structures could remain. However, I have concluded that storage containers are buildings such that they would require planning permission in any event.
37. Since an appeal on ground (a) has not been made there is no deemed application for planning permission before me. Hence, I am unable to consider whether they comply with relevant planning policies, including the National Planning Policy Framework (NPPF). Nor am I able to grant planning permission for part of the development to remain, or for the storage containers to be clad or otherwise disguised.
38. It has been suggested that parts of the development could remain and be used for purposes ancillary to the main use of the land. However, allowing part of it to remain would not fully remedy the breaches of planning control.
39. For these reasons, I conclude that the appeals under ground (f) should fail.

The Appeals on Ground (g)

40. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.

Appeal B

41. The enforcement notice provides three months for compliance with the requirements of the notice. However, the Council suggest that six months is sufficient time for the appellants to find an alternative to the storage containers and a yurt. That would be consistent with the appellant's stated intention to remove the storage containers in any event by August 2020.
42. For these reasons, I conclude that this appeal under ground (g) should succeed and the period for compliance with the notice should be changed to six months.

Appeal A

43. I understand that the appellant will need to find alternative residential accommodation. I note that the appellant suggests that a longer period is required to submit and receive a decision on an application for the permanent retention of the mobile home. However, it is unclear why that could not be determined within the six months given in the notice.
44. As set out in the appeal on ground (c) earlier, the mobile home and caravan do not benefit from the planning permission available within the requirements of Class A, Part 5, Schedule 2 of the GPDO. Had they done so, they would be required to be removed once the building operations had been completed, i.e. by August 2020. As such, the appellant's argument seems to have been predicated on an awareness that they would in any event need to find alternative residential accommodation by August 2020.
45. As a result, the period specified in the notice does not fall short of what should reasonably be allowed.
46. For these reasons, I conclude that this appeal under ground (g) should fail.

Formal Decisions

Appeal A

47. It is directed that the enforcement notice is corrected by:
the deletion of the word "*caravans*" and the substitution of the word "*caravan*" in section 5 of the notice, what you are required to do.
48. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

49. It is directed that the enforcement notice is corrected by:
the deletion of the words "*on agricultural land*" in section e of the notice, the breach of planning control alleged.
50. It is directed that the enforcement notice is varied by:
the deletion of *3 months* and the substitution of *6 months* as the time for compliance at section 5 of the notice, what you are required to do.
51. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen INSPECTOR