



Appeal Decisions

Site visit made on 4 February 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 April 2020

Appeal A Ref: APP/Y9507/C/19/3228664

Appeal B Ref: APP/Y9507/C/19/3228665

Land to the South of the A27 known as The Ranch, Water Lane, Angmering, Littlehampton BN16 4ER

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr John Edwards and Mrs Joanne Edwards against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 9 May 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years the material change of use of Land to residential and the construction of a structure for the purposes of human habitation, shown in the approximate position on the attached Plan as a red hatched rectangular box.
 - The requirements of the notice are:
 - (i) Cease the use of the land for the stationing of the structure for the purposes of human habitation.
 - (ii) Remove the structure as marked on the attached plan as a rectangular red box from the land.
 - (iii) Remove the concrete footings and pads which facilitate the structure being on site and restore the land.
 - (iv) Remove any items associated to the structure and domestic living.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.
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Appeal C Ref: APP/Y9507/W/19/3237085

Fairhaven, Water Lane, Angmering, Littlehampton BN16 4ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Edwards against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/02605/FUL, dated 30 May 2019, was refused by notice dated 6 August 2019.
 - The development proposed is described as: The replacement of a mobile home consented under SDNP/14/06164/FUL. The applicant is replacing the development with a mobile home with an agricultural occupancy restriction.
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Appeal A Decision

1. The ground (g) appeal succeeds and it is directed that the enforcement notice is varied by the deletion of "two months" in section 6 (i) to (iv) of the notice and the substitution instead of "six months". Subject to this variation 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.

Appeal B Decision

2. The ground (g) appeal succeeds and it is directed that the enforcement notice is varied by the deletion of "two months" in section 6 (i) to (iv) of the notice and the substitution instead of "six months". Subject to this variation the enforcement notice is upheld.

Appeal C Decision

3. The appeal is dismissed.

Preliminary Matters

4. The reasons for refusing the planning application differ from the reasons for issuing the enforcement notice. In addition, the siting of the development which exists on the appeal site differs from what is shown on the proposed site plan provided as part of the planning application.
5. Moreover, dimensions shown on the proposed site plan do not match those shown on the enforcement notice site plan. Therefore, I cannot be certain that the development that has occurred on site is the same as the development applied for in the planning application. However, a comparison of the two developments indicates they are broadly similar.
6. The appellant has submitted the same statement for the enforcement appeals and the planning appeal. The South Downs National Park Authority (the Authority) has said that its ground (a) case is covered by its planning appeal submission and that principally relies on the officer's delegated report for the refusal of planning permission. So given the above points, and to avoid duplication, I have considered the ground (a) appeal and the section 78 appeal together. But I have distinguished between the development in the enforcement appeals and the planning appeal, where necessary.
7. The saved policies of the Arun District Local Plan 2003 referred to in the enforcement notice have been superseded by the South Downs Local Plan (the Local Plan) which was adopted on 2 July 2019 and I have determined the appeals on this basis.

Reasons

The ground (c) appeals

8. The burden of proof in a ground (c) appeal falls on the appellant. The evidence indicates the appeal site previously contained a mobile home and that planning permission had been granted for that mobile home. The appellant has stated they are replacing that mobile home 'like for like' and so the question arises as to whether the development on site is the 'like for like' replacement of a mobile home.

9. For the development which exists to qualify as a mobile home it must satisfy all criteria set out in section 13 of the Caravan Sites Act 1968. These criteria include that it must be composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices, and, when assembled is physically capable of being moved by road from one place to another.
10. In addition, section 13 of the 1968 Act contains size limitations. These exclude structures which, when assembled, exceed 6.8 metres in width. The enforcement notice site plan identifies that the structure which exists is 7.3 metres wide. No measurement has been provided by the appellant to dispute this figure and so the evidence indicates the structure is too wide to satisfy the definition of a mobile home.
11. Moreover, the structure I saw on my site visit did not have any windows, external cladding or roof covering. It therefore is clearly to be constructed of many parts and so is not composed of 'not more than two sections to be assembled on site', as is required to meet the above definition of a mobile home.
12. Based on the information provided, I am not satisfied the development on site complies with the definition of a mobile home, set out in section 13 of the Caravan Sites Act 1968. Therefore, it cannot be 'like for like' replacement of a mobile home which previously existed on site with planning permission. Considering all of the above points the appeals on ground (c) fail.

The ground (a) appeal and the section 78 appeal

13. The main issues in the ground (a) appeal are:
 - whether the development accords with the development strategy for the area, and
 - the effect of the development on the character and appearance of the area.
14. For the section 78 appeal, the main issues are the same as the ground (a) appeal but with the additional main issue of:
 - whether the proposal would be sustainable in respect of climate change mitigation and adaptation, minimum standards of water and energy efficiency and ecosystems services.

Development Strategy

15. The appeal site is in the South Downs National Park. For the purposes of Policy SD25 of the Local Plan, the appeal site is outside of any settlement boundary and is therefore within open countryside. Development is acceptable in such a location only in exceptional circumstances specified in the policy. In broad terms, these exceptions relate to: (a) land allocated for development in the development plan, or (b) where there is an essential need for a countryside location, or (c) community infrastructure, or (d) previously developed sites. There is no evidence that exception (a), (c) or (d) are relevant in this case.
16. The appellant describes the location of the appeal site as isolated by the development of adjacent road infrastructure. Paragraph 79 of the National Planning Policy Framework (the Framework) is referred to in the enforcement notice and by the appellant. Paragraph 79 states that planning decisions should

avoid the development of isolated homes in the countryside unless specified circumstances apply. There is a pub a relatively short walk from the appeal site but overall, based on the information provided and my observations from my site visit, in my judgement the appeal development is an isolated home in the countryside in relative terms.

17. One of the circumstances where an isolated home would comply with paragraph 79 of the Framework is where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside. The appeal site is also covered by the Patching Neighbourhood Development Plan which was made on 12 April 2018 (the Neighbourhood Plan) and its Policy HBT 1 echoes the wording of paragraph 79 of the Framework.
18. The appellant states the appeal development is for a rural workers dwelling and that they are happy to have an agricultural occupancy restriction placed on the property. Accordingly, Policy SD32 of the Local Plan applies, in addition to exception (b) from Policy SD25 discussed above, as well as paragraph 79 of the Framework and Policy HBT 1 of the Neighbourhood Plan.
19. The appellant states he is the livestock manager and head shepherd of the Castle Goring Estate. Labour requirement calculations relating to their cows and sheep have been provided. It is the appellant's view there is a functional need to live on site and in this location, on animal welfare grounds and that the site is in the centre of the farming operations he oversees and manages.
20. However, Policy SD32 contains tests (a) to (e) which must be met, in addition to requiring a demonstration that the nature and demand of agricultural work make it essential for the worker to live at or close to the site of their work. The tests require it to be demonstrated that:
 - (a) The agricultural or forestry enterprise is established, extensive, viable and contributes to the special qualities of the National Park;
 - (b) There is an essential functional need for the agricultural and forestry dwelling that could not be fulfilled either by another residential dwelling on the enterprise or existing residential accommodation in the local area which is suitable and available for occupation by the workers concerned;
 - (c) No other residential dwellings either on or closely connected to the enterprise have been sold off separately or alienated from it in the past five years unless the reason for separation is justified through robust evidence;
 - (d) Full consideration has first been given to the conversion of an existing building within the enterprise; and
 - (e) The proposed agricultural or forestry dwelling should be well-related in terms of siting to existing buildings or dwellings within the enterprise, result in and remain as a total habitable floor space not exceeding 120m² (gross internal area) and be sensitively designed.
21. No evidence has been provided which satisfies me all of the above tests have been met, particularly given the scale of the structure which has been built and which is proposed in the section 78 appeal. In this case, the aforementioned labour requirements and an agricultural occupancy commitment in themselves are not sufficient to satisfy Policy SD32 of the Local Plan, or Policy SD25,

Policy HBT 1 or paragraph 79 of the Framework in respect of evidence of 'essential need'.

22. Based on the information provided, I am not satisfied it is necessary for the appellant to live in the structure which has been erected on the appeal site or the development which is proposed in the section 78 appeal. I conclude on this main issue the appeal development in neither appeal accords with the development strategy for the area. Accordingly, there is not compliance with Policies SD25, SD32 or HBT 1 noted above, or the Framework for either appeal in this regard.

Character and Appearance

23. The appeal site is a large plot between the A27 and the A280 Water Lane. The site contains a track and an area of hardstanding but is otherwise grassed with hedges around its perimeter. Both the ground (a) appeal development and the section 78 appeal development consists of a single storey pitched roof structure.
24. At the time of my visit the structure on the site was not complete and was tightly wrapped in plastic sheeting to protect it from the elements. Nevertheless, its scale was obvious and is similar to what is shown on the plans provided for the planning application in the section 78 appeal.
25. The structure on the site is clearly seen when travelling west on the A280 Water Lane from its nearby junction with the A27. In this open and otherwise undeveloped countryside location, the structure appears as a substantial and incongruous feature within the National Park landscape. I have no reason to believe its completed form would have any lesser effect given its scale, and in my judgement, the effect of the development proposed in the section 78 appeal would not be appreciably different in this regard either.
26. The appellant has said that they will plant trees and hedges and let roadside hedges grow to block views of the development from the A280. But no further detail has been provided. Based on the information available, I am not satisfied the plant growth proposals described by the appellant would mitigate the effect of the development on the character and appearance of the area for either appeal.
27. Included in representations I have been provided with are comments which suggest the development would improve the scenic beauty of the area from how the site was with caravans and trailers. But there is no evidence which satisfies me that the development which is the subject of the ground (a) appeal or the section 78 appeal would have a lesser effect on the character and appearance of the area than what may have lawfully existed on the site before.
28. I conclude that the development in the ground (a) appeal and the section 78 appeal would harm the character and appearance of the area. In respect of this main issue, the development does not comply with Policies SD1, SD4, SD5, or SD6 of the Local Plan, Policy HBT 1 or PLACES 5 of the Neighbourhood Plan. Moreover, it does not comply with paragraph 172 of the Framework which requires me to give great weight to conserving and enhancing landscape and scenic beauty in National Parks.

Climate Change, Water, Energy and Ecosystems

29. Policy SD48 of the Local Plan seeks that all new development incorporates sustainable design features as appropriate to the scale and type of development. It seeks that residential development achieves a 19% carbon dioxide reduction improvement against Part L (2013) through the energy efficiency of the building and a total mains water consumption of no more than 110 litres per person per day. Under this policy, all development proposals are required to demonstrate how the development addresses climate mitigation and adaptation through the on-site use of zero and/or low carbon technologies, sustainable design and construction, and low carbon materials.
30. In the documents provided the appellant has said the structure is designed to accommodate 30 solar panels and a windmill. But these are not shown on the drawings and no further information has been provided. However, the Authority has suggested a sustainable construction condition and based on the information provided there is no reason why the requirements of Policy SD48 could not be achieved by the imposition of a planning condition in this case, if the development proposed were acceptable in all other respects.
31. Policy SD2 of the Local Plan states that development proposals will be permitted where they have an overall positive impact on the ability of the natural environment to contribute goods and services. This policy lists the opportunities by which this may be achieved and requires that proposals are supported by a statement that sets out how the development impacts on ecosystem services. Whilst the appellant states the site will be landscaped, there is otherwise no response to the specific requirements of Policy SD2.
32. On this main issue I conclude a planning condition could ensure the proposal would be sustainable in respect of climate change mitigation and adaptation and water and energy efficiency to comply with policy SD48 of the Local Plan. But in the absence of a response to the specific requirements of Policy SD2 the proposal would not be sustainable in respect of ecosystem services and would not comply with Policy SD2 of the Local Plan in this regard.

Other Matters

33. My attention has been drawn to Policy SD30 of the Local Plan which relates to replacement dwellings. As I saw on my site visit, no dwelling lawfully exists on the site and so I am not satisfied Policy SD30 is relevant in this case. Moreover, a mobile home which previously existed has since been removed and evidence indicates it was considerably smaller and would have had a significantly lesser effect on character and appearance than development which is the subject of these appeals.
34. The appellant has said that as a stockman working long hours, with working dogs, an all-terrain vehicle and agriculture vehicles, it is not possible to live in a housing estate or town. But this does not justify the appeal development in this case in light of the harm identified above. I appreciate the appellant may have children who go to the local school and that representations have been received in support of the development. But these points do not change my overall conclusions in this case.
35. The appellant considers the Authority has been heavy handed with a stop notice but this is not a matter for me to consider within the context of appeals

under section 78 or 174. I have been referred to developments on other sites nearby but based on the information provided I cannot be certain the circumstances of those cases is the same as in this case.

Conclusion on the ground (a) appeal and the section 78 appeal

36. Considering all of the above points, particularly in respect of the development strategy and character and appearance, I find conflict with the development plan overall and the appeal on ground (a) and the section 78 appeal both fail.

The ground (f) appeals

37. Under section 173(4) of the above Act, when serving an enforcement notice the Authority may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the use to cease and all of the development to be removed so it is clear that the purpose of the enforcement notice is to remedy the breach of planning control.
38. Whilst the appellant has proposed planting to block views of the development and states that alterations could have been made by negotiation with the Authority, no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeals on ground (f) fail.

The ground (g) appeals

39. A stop notice was issued with the enforcement notice. However, since appeal statements were received, a public health emergency relating to COVID-19 has begun. The Authority has subsequently said that 6 months is a reasonable time frame to comply with the notice. The appellant has stated that six to eight months would be required. I have no reason to disagree with the Authority's new position in this regard and given the relatively simple construction of the development, I am satisfied six months is reasonable. I will extend the period of compliance in line with the Authority's new position in this regard. As such the appeals on ground (g) succeed to this extent.

Appeal A Conclusion

40. For the reasons given above, I conclude that the period for compliance with the requirements in the notice falls short of what is reasonable so I vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Conclusion

41. For the reasons given above, I conclude that the period for compliance with the requirements in the notice falls short of what is reasonable so I vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal C Conclusion

42. For the reasons given above the appeal is dismissed.

L Perkins INSPECTOR