



Appeal Decision

Site visit made on 25 February 2020

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 May 2020

Appeal Ref: APP/L3815/C/19/3233587

Land at 1 Green Acre, Inland Road, Nutbourne, Chichester, West Sussex

- 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 S Culpitt (Seaward Properties Limited) against an enforcement notice issued by Chichester 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, change of use of the land to use as a building site compound and the stationing of a catering van.
 - The requirements of the notice are to:
 - (i) Discontinue the use of the Land as a building site compound;
 - (ii) Remove all building materials from the Land;
 - (iii) Remove all construction vehicles and cars from the Land;
 - (iv) Remove all office equipment from the Land;
 - (v) Discontinue the use of the Land for the stationing of a catering van; and
 - (vi) Remove the catering van from the Land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Preliminary Matters

1. There is no dispute that the catering van has been removed in compliance with the enforcement notice. The appeal is directed at the alleged change of use of the land to use as a building site compound only.

Decision

2. It is directed that the enforcement notice be corrected by:
 - the insertion of the additional words 'other than required temporarily in connection with and for the duration of operations being carried out on the adjoining land, for the construction of dwellings with associated access, open space and landscaping granted planning permission on 2 April 2015 (reference SB/14/02800/OUT) to requirements (ii), (iii) and (iv); and
 - the deletion of the words "and cars from the land" in requirement (iii); and
 - the addition of a further requirement "(vii) remove all cars from the land."

3. The appeal is allowed insofar as it relates to the building site compound and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the building site compound subject to the following conditions:
 - 1) The use hereby permitted shall be discontinued and the land restored to its former condition, capable of accommodating five pitches for occupation by gypsies and travellers, either before the expiration of 12 months from the date of this permission or within 28 days of the completion of the development granted by virtue of planning permission reference SB/14/02800/OUT, whichever shall occur first.
 - 2) The site shall not be used except between the hours of 0800 - 1900 during Monday to Friday, and between the hours of 0900 - 1300 on Saturdays and not at all on Sundays or public holidays.
 - 3) No access shall be provided to the site from Inlands Road and the access from Inlands Road shall be closed off for the duration of this development within 28 days of the date of this decision.
4. The appeal is dismissed and the enforcement notice is upheld as corrected for the stationing of a catering van, and planning permission is refused in respect of the stationing of a catering van, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

5. The use of the land as a building site compound relates to construction works being carried out on the adjacent land to the West, known as Priors Orchard, Main Road, Southbourne. That land is the subject of a planning permission for the construction of 157 dwellings with associated access, open space and landscaping, granted by the Council on 2 April 2015 (reference SB/14/02800/OUT). The development has commenced but at the time of my visit had yet to be completed.

Ground (c) – that there has not been a breach of planning control.

6. The appellant claims that the construction site compound development alleged is permitted development granted by Class A of Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended. Class A relates to temporary buildings and structures. It permits 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. Sub-section A.1 confirms that development is not permitted by Class A if— (a) the operations referred to are mining operations, or (b) planning permission is required for those operations but is not granted or deemed to be granted.
7. The Council argue that the development alleged is not permitted by Class A as the material change of use of the site from a residential caravan site for gypsies and travellers to a site compound requires planning permission.
8. Class A permits the development referred to within the Class on 'land adjoining that land' where the operations are being carried out; those 'operations' in this case, being the residential development on the adjoining land. The exclusion in

Sub-section A1(b) is if planning permission is required but has not been secured for "those operations", i.e. the residential development. There is no dispute that the residential development on the adjacent land has planning permission. As such, I do not find any conflict with the limitation set out in sub-section A1(b).

9. Notwithstanding that the notice alleges a change of use of land, I have considered, having regard to the particular requirements of the notice, whether the matters alleged (excluding the catering van) would comprise the provision on land of buildings, moveable structures, works, plant or machinery, as permitted by Class A, required temporarily in connection with and for the duration of operations being carried out on land adjoining that land.
10. The appellant confirms that the site is required for a temporary period only in connection with the on-going housing development, after which time it could revert to its lawful use. Indeed s57(3) allows a reversion to the normal use in respect of GPDO permissions subject to time limitations, e.g. Schedule 2, Part 4, and thus would provide for a reversion to the use of the land as a caravan site for gypsies and travellers (its normal use), should the development be permitted by the GPDO.
11. In the context of this appeal, the use of the appeal site as a site compound includes the storage of building materials, parking of construction vehicles and cars and use of caravans as a site office. The use of the existing caravans as site office(s), and provision on the land of construction machinery including construction vehicles and building materials clearly required in connection with the neighbouring housing development would appear to be consistent with that permitted by Class A. However, the parking of other vehicles that could not be regarded as construction machinery, would in my view, fall outside of what can be provided.
12. To conclude, the overall use of the land would not wholly comprise development permitted by Class A of Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended. That said, a notice cannot take away lawful rights and so could not require the removal of moveable structures, works, plant or machinery, as permitted by Class A, that are required temporarily in connection with and for the duration of operations being carried out on the adjoining land. I shall therefore correct the notice to reflect this. Ground (c) succeeds to this limited extent.

Ground (a) and the deemed planning application

13. The main issue is the effect of the development on the supply of gypsy and traveller sites in the District.
14. The normal and lawful use of the appeal site is as a gypsy and traveller caravan site. It therefore formed part of the existing supply of sites for gypsies and travellers and contributed to the Council's five-year supply. There can be no doubt that whilst the site is a building site compound it is not available as a gypsy and traveller site and thus would not be considered to be an available site at present.
15. In light of the ongoing need for such accommodation as set out in the Coastal West Sussex Gypsy and Traveller Accommodation Assessment, dated October 2018, the on-going availability of the site to provide accommodation for

gypsies and travellers is important and a consideration to which I afford great weight.

16. However, as set out above, the GPDO permits the provision of moveable structures, works, plant or machinery, required temporarily in connection with and for the duration of operations being carried out on land adjoining that land. This represents a realistic fall-back position. Accordingly, irrespective of whether the site is maintained for the uses alleged or simply to a more limited extent in accordance with Class A of Part 4, Schedule 2 of the GPDO, it will not be available for its normal and lawful use, at least for a limited period. A temporary permission is sought for 12 months. In light of the realistic fall-back position identified, to which I give considerable weight, I intend to grant planning permission for those matters alleged for a temporary period, but excluding the catering van, for which no case is made. However, some time has lapsed since the appeal was lodged and work has continued to progress. I therefore intend to restrict the permission to a temporary period of 12 months, or, on completion of the development, whichever should occur first to ensure the land is restored and available for use as a gypsy and traveller site at the earliest opportunity.
17. Given the close proximity of the site to other residential properties, it is necessary to restrict the hours of use of the site and prevent access from Inlands Road to ensure the development does not unreasonably detract from the living conditions of occupiers of nearby properties.

Conclusion

18. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

C. Sherratt

Inspector