
Appeal Decisions

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 A - Ref: APP/L3815/C/19/3235992

Land at Fisher Granary, Fisher Lane, South Mundham PO20 1ND

- 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 G Scott against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 6 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the Land to use for the stationing of a mobile home for human habitation.
 - The requirements of the notice are to:
 - (i) Cease the use of the Land for the stationing of a mobile home for human habitation;
 - (ii) Remove the mobile home from the Land;
 - (iii) Remove the wooden outbuilding from the Land;
 - (iv) Remove the wooden decking area, steps and railings attached to the mobile home from the Land;
 - (v) Remove the tables and chairs, washing line, barbecue and hot tub from the Land;
 - (vi) Remove the gravelled area from the Land; and
 - (vii) Following compliance with (vi) above, level the Land and reseed the Land with grass.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/L3815/W/19/3236003

Fisher Granary, Fisher Lane, South Mundham PO20 1ND

- 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 G Scott against the decision of Chichester District Council.
 - The application Ref NM/19/00405, dated 7 February 2019, was refused by notice dated 3 April 2019.
 - The development proposed is use of land for the stationing of a caravan for use as holiday let.
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Procedural Matters

1. Neither the representative for the Council or the appellant's agent attended the site visit at the appointed time. The appellant, having arrived before I left, agreed that I could be given access to the site so that I could conduct the site visit unaccompanied. I proceeded on this basis with the agreement of the Council's representative.

2. A Unilateral Undertaking accompanies Appeal B in which the appellant undertakes that should planning permission be forthcoming, a financial contribution will be made towards the provision of access mitigation measures in respect of the Chichester and Langstone Harbours and Pangham Harbour Special Protected Areas (SPAs). The sum reflects that calculated as necessary to reflect a net increase of 1 dwelling near these SPAs. The deed is signed and dated.

The Enforcement Notice (Appeal A)

3. The alleged breach of planning control is the stationing of a mobile home for human habitation. It is clear from the planning history provided by the parties that planning permission was granted in 2015 and 2016 for the retention of the caravan 'for a temporary period of one year to enable occupation whilst adjacent barn is converted to a dwelling under the terms of NM/14/03319/COUMB'. The development to which the 2016 planning permission relates is the retention of the caravan for occupation. It is subject to condition 2 that states: *1 year from the date of this permission the building¹ hereby permitted shall be removed from the land in its entirety. The land shall be restored to its former condition in its entirety. The residential use of the land shall cease, and the land reverted back to its former agricultural use in its entirety.* The planning permission was dated 20 June 2016.
4. Upon completion of the barn conversion, it is understood that the appellant retained the caravan using it for holiday-let purposes and thus continuing to allow its occupation and failing to remove it. The continuation of a use after the expiry of a planning permission granted for a limited period – a temporary permission – is not development. An enforcement notice directed against the continuing use should allege a breach of the condition that required the use to cease at a specified time. In this case the 'occupation' continued beyond the one-year period when condition 2 required it to cease and the land to be restored.
5. The actual breach that has occurred is the failure to comply with that condition. As the requirements of the notice would not be any more onerous, I consider I can correct the enforcement notice to refer to a breach of the condition without causing injustice to either party. The views of both main parties were sought, both of whom agreed that the notice could be corrected without causing injustice.
6. In such cases, the deemed planning application under s177(5), by analogy with s73A(3)(b), will be for the development originally permitted but without the condition, with effect from the day following the date when the limited period expired; in this case 20 June 2017.
7. Notwithstanding the above, I note that no reference is made within the description to its use as a holiday let. The reasons for issuing the notice refer to its use as a holiday let. It would be open to me to consider whether to impose a condition restricting occupation to a holiday use, should I be minded to allow the appeal on ground (a) and grant planning permission.

¹ The reference to 'building' instead of 'caravan' is clearly a typographical error.

Decisions

Appeal A

8. It is directed that the enforcement notice be corrected by:

- The deletion of the description of the breach of planning control alleged in section 3 and its replacement with "the occupation of the caravan in breach of condition 2 of planning permission reference 16/01568/FUL, dated 20 June 2016.
- Inserting the words "Comply with condition 2 of 16/01568/FUL, dated 20 June 2016, by:" in part 5 'What you are required to do' before sub-sections (1) to (vii).
- Substitute the plan attached to the enforcement notice for the plan attached to this decision.

9. It is directed that the enforcement notice be varied by the substitution of 3 months for 9 months as the period for compliance.

10. Subject to these corrections and variation 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.

Appeal B

11. The appeal is dismissed.

Reasons

Appeal A, ground (b) – that the matters alleged have not occurred

12. The appellant asserts that the plan identifies land that forms part of the residential curtilage of his property, but no mixed use is identified. From my observations on site, it is clear that the development alleged has only occurred on a smaller part of the land to that identified, clearly defined by a means of enclosure. I am satisfied that the plan attached to the notice can be substituted for the amended plan produced by the appellant without causing injustice to either main party to reflect the area where the breach has occurred.

13. The appeal on ground (b) succeeds to this limited extent.

Appeal A, ground (a) and the deemed planning application and Appeal B

14. The main issues are:

- (a) whether the development is sustainable; and
- (b) the effect of the development on the character and appearance of the area.

Policy Framework

15. The development plan includes the Chichester District Local Plan. I refer to those policies of particular relevance. Policy 1 reflects the presumption in favour of sustainable development found in the National Planning Policy Framework (the Framework). The policy states that planning applications that accord with the policies of the Local Plan should be approved, unless material considerations indicate otherwise. Policy 2 (Development Strategy and Settlement Hierarchy) is an overarching policy. It identifies the locations where sustainable development will be accommodated which in terms of scale, function and character support the role of the settlements. Development in the 'Rest of the Plan Area' outside the settlements is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45-46.
16. Policy 30 relates to proposals for tourism and leisure development, including tourist accommodation. It states that permission will be granted where it can be demonstrated that the following criteria have been considered: (1) It is sensitively designed to maintain the tranquillity and character of the area; (2) It is located so as to minimise impact on the natural and historic environment, including that of visitors or users of the facility, particularly avoiding increasing recreational pressures on Chichester Harbour AONB and Pagham Harbours and other designated sites; (3) It provides a high quality attraction or accommodation; and (4) Encourages an extended tourist season.
17. Policy 33 (New Residential Development) states that planning 'permission will be granted for new residential development and replacement dwellings where it can be demonstrated that certain criteria have been met. Policy 45 (Development in the Countryside) outlines the criteria that need to be met where planning permission will be granted for sustainable development in the countryside. It states that the criteria that need to be met are: 1) The proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement; 2) The proposal is complementary to and does not prejudice any viable agriculture operations on a farm and other existing viable uses; and 3) Proposals requiring a countryside setting, for example agricultural buildings, ensure that their scale, siting, design and materials would have minimal impact on the landscape and rural character of the area.

Sustainable development

18. The site lies outside the nearest settlement boundary of North Mundham and Runcton. There is no substantive evidence to suggest there are any public services or facilities (including public transport links) within a reasonable walking distance. Visitors to the mobile home will therefore be heavily reliant on the use of a motor car to access the facilities in the neighbourhood.
19. In accordance with Policy 2, development in this countryside location, outside a settlement, is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45-46. There is no evidence before me to suggest any essential local rural need or rural diversification support. Whilst the appellant claims that there is a pressing and current need for additional holiday accommodation in Chichester District, no substantive evidence is provided to support this or why it cannot be located in accordance with the overarching development strategy and settlement hierarchy set out in Policy 2.

20. Rather, the appellants case is primarily that the quiet tranquil location is what attracts guests to the area. That might be so, but that is not to say that the accommodation itself 'requires' a location outside a settlement, although I accept some visitors may specifically be looking for accommodation that offers more tranquillity. However, any economic gain generated by only one unit of tourist accommodation, would only be likely to be small and caravan accommodation is unlikely to extend the tourist season to any material extent.
21. The appellant asserts, that re-using the caravan is a more sustainable option than removing the caravan and likens the development to the re-use of a building. Reference is made to the conversion of a double garage at the neighbouring property into 1 holiday let on 23 November 2018. However, the sustainable benefits of re-using an existing building, of a permanent construction, cannot in my view be applied or compared to the use of a mobile home that by its very nature is a moveable structure and could potentially be used elsewhere. I afford these arguments very little weight.
22. To conclude, notwithstanding the small economic benefits, the development overall would not be a sustainable form of development. I therefore find conflict with relevant policies in the development plan and the Framework.

Character and appearance of the area

23. I do not agree with the Council's assessment that the appeal site is not closely related to any existing buildings. It is situated close to the now converted barn which itself is part of a small scattering of buildings. I do not therefore find conflict with policy 45 in this regard.
24. Policy 30 requires tourism development to be sensitively designed to maintain the tranquillity and character of the area; and to provide high quality accommodation. I have no doubts that the mobile home provides accommodation to a high standard as verified in the various reviews provided. However, a mobile home, even with cladding, is not consistent with the general vernacular of the surrounding area. Furthermore, its siting to the rear of the converted barn and the associated creation of a separate planning unit unrelated to its surroundings, is out of keeping with the existing pattern of development.
25. To conclude, overall the development is not sensitively designed or of high quality in the context of its surroundings; it fails to reinforce local distinctiveness and has a greater than minimal impact on the rural character and appearance of the area. It is contrary to policies 30, 33 and 45 of the Chichester Local Plan in particular.

Other considerations

26. The site is located within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours SPA and 3.5km within the Pagham Harbours SPA, where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. The Unilateral Undertaking relates to circumstances where Appeal B is allowed only and would provide a contribution towards access mitigation measures in respect of these SPAs.
27. However, it would not therefore provide sufficient mitigation against such an impact if Appeal A were allowed and planning permission granted and

subsequently implemented. Appeal A would therefore be contrary to Policy 50 and 51 of the Chichester Local Plan Key Policies 2014-2029. The development would contravene the Conservation of Habitats and Species Regulations 2017 and the advice in the Framework.

Conclusion

28. Overall, the development would conflict with the development plan as it is not a sustainable form of development and it harms the character and appearance of the area. The appeals on ground (a) (Appeal A) and Appeal B fail.

Appeal A, Ground (g)

29. The appellant argues that a compliance period of three months would not enable existing bookings (*my emphasis*) to be honoured; a period of 6 months is sought. Whilst the appellant is entitled to assume the success of the appeal, the appellant's statement is dated November 2019. It has not been suggested that the appellant would continue making bookings 6 months ahead until the outcome of the appeal was known. Even if that were the case, new bookings beyond the period of three months specified for the use to cease and the mobile home to be removed, would have been made in the full knowledge of the enforcement notice requirements. In any event, I consider three months is a reasonable period of time for the use to cease and, in normal circumstances, arrangements to also be made for the mobile home to be removed and the outbuilding, decking and other paraphernalia to be removed.

30. However, I recognise that the current uncertainty in relation to how long restrictions may remain in place due to the current COVID-19 health pandemic may impact on the ability to comply with the requirements, in particular requirement (ii). I acknowledge that the situation is fluid and it is unclear how long or what form restrictions associated with the pandemic will be beyond those currently in place. The caravan is providing a source of accommodation available for key workers. I consider a compliance period of 9 months reasonable and proportionate at this time. Under s173A of the Act the Council does have discretionary powers to extend the period for compliance should they consider it appropriate to invoke them.

31. The appeal on ground (g) succeeds to this extent.

Overall Conclusions

32. For the reasons given above I conclude that Appeal A should not succeed other than to a limited extent in respect of grounds (b) and (g). I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

33. For the reasons given above I conclude that Appeal B should be dismissed.

C. Sherratt

Inspector



Plan

This is the plan referred to in my decision dated: 13 May 2020

by C Sherratt DipURP MRTPI

Land at: Fisher Granary, Fisher Lane, South Mudham, Chichester, West Sussex
("the Land") edged black on the attached plan

Reference: APP/L3815/C/19/3235992

Not to Scale.

