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## Appeal Decision

Site visit made on 10 March 2020

**by S Hanson BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 May 2020**

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**Appeal Ref: APP/P0240/C/19/3237529**

**Land at 42 Rectory Lane, Houghton Conquest, Bedford MK24 3LD**

- 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 Andrew Shears against an enforcement notice issued by Central Bedfordshire Council.
  - The enforcement notice, numbered CB/ENC/18/0017 – 2019 version, was issued on 28 August 2019.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from an agricultural use to use as a residential caravan site.
  - The requirements of the notice are: 1. Cease the unauthorised use of the land. 2. Remove all of the caravans from the land. 3. Remove all of the service pitch installations from the land and return the land to its former condition.
  - The period for compliance with the requirements is 6 calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (f) (g) of the Act. 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.
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### Decision

1. It is directed that the enforcement notice be corrected by the deletion of the steps required to comply with the notice in section 5 'What you are required to do' and the substitution therefor by the following text:
  1. Cease the unauthorised use of the land as a residential caravan site.
  2. Remove all the caravans from the land.
  3. Remove all the service pitch installations (electricity "hook up" units and LPG cylinders) from the land and return the land to its former condition.
2. It is also directed that the enforcement notice be varied by the deletion of 6 calendar months and the substitution of 7 months as the period for compliance.
3. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the Act.

### The appeal on ground (c)

4. An appeal on this ground is that there has not been a breach of planning control. Where an appeal on a legal ground is made, such as on ground (c), the onus of proof rests with the appellant and the level of proof is on the balance of probability. In this case, at the date of the notice, the area outlined in red on

the plan was primarily used as a residential caravan site and this is not disputed by the appellant.

5. However, the appellant argues that the notice should have washed over a larger area of the site, including the mobile home in which the appellant lives, and for which a certificate of lawful use or development (LDC) was issued<sup>1</sup>. The LDC outlined the mobile home and no other land. Therefore, the residential use of the land is limited to the mobile home only, as defined by the plan attached to the LDC.
6. The residential caravan site, to which the notice refers, is clearly visible on the ground and is correctly identified, and outlined in red, on the plan attached to the notice. The appeal site is self-contained, physically and functionally separate from the land which benefits from the LDC. Furthermore, there is no legal obligation for the notice to cover the entirety of the relevant planning unit. The notice is correct by incorporating land only where there is an alleged material change of use (MCU) and where the alleged breach has occurred.
7. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act which defines the two limbs of development, namely operational development, or the making of a MCU of any building or other land.
8. The concept of a MCU is not defined in any statute or statutory instrument; however, it is linked to the significance of a change and the resulting impact on the use of land. For there to be a MCU there needs to be some significant difference in the character of the activities from what has gone on previously. It is a question of fact and degree in each individual case.
9. The notice attacks the MCU of the site from agriculture (including horticultural) to a residential caravan site. I noted at my site visit that there was evidence of former horticultural activity, and the planning history provided within the appeal statements refer to the former use of the site as such.
10. The introduction of the residential use has resulted in a change in the physical character of the site. The caravans have been brought onto the site and connected to the mains electricity supply and individual gas cylinders. They are used for residential purposes and items associated with residential living are likely to be on display. This affects the way the site is being used and impacts both the physical and visual appearance of the site. In addition, there are likely to be off-site effects arising from comings and goings associated with the residential use. This type of activity is significantly different in comparison to the site's previous agricultural use. The residential caravan site results in a change in the definable character of the site's use and that change falls within the scope of s55(1). In the absence of any evidence to the contrary, a MCU of the land has occurred for which there is no planning permission, and no deemed permission exists through the General Permitted Development Order.
11. In conclusion, an argument based on whether there has been a MCU has not been made. The siting of the caravans on this land for use as residential accommodation was in breach of planning control at the time the enforcement notice was issued and continues to be in breach. Accordingly, the appeal on ground (c) fails.

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<sup>1</sup> CB/18/00374/LDCE issued 6 February 2019

## **The appeal on ground (a) and the deemed planning application**

### **Main Issues**

12. These are (1) whether the development is harmful to the character and appearance of the area; (2) the effect of the neighbouring development on the future occupiers in terms of noise; (3) the effect of the development on the living conditions of future occupiers of the site in terms of open space; and (4) the effect of the development on highway safety.

### **Reasons**

#### *Character and appearance*

13. The appeal site is located outside the settlement of Houghton Conquest, a large village as classified by Policy CS1 of the Central Bedfordshire Core Strategy and Development Management Policies document (2009) (the CS). The site lies beyond the settlement envelope and, for planning purposes, is classified as being within the open countryside.
14. The development is for the change of use of the land to a residential caravan site. The caravans are not used for purposes akin to tourism but provide accommodation for workers who come to the area on temporary contracts. The site is currently occupied by 13 touring caravans.
15. The prevailing topography of the surrounding land is generally flat and there is a public right of way close to the site. The boundaries are lined with hedgerows and there are agricultural buildings and stables within the site which help to provide an element of screening; visibility is therefore limited and localised.
16. The site is on a narrow 'no through' lane, with residential development on the opposite side. Development along this outlying road from the village is low density as the urban influences decline towards the open agricultural landscape. The pattern of development in this quiet residential area is predominately detached houses in generous plots with a frontage to Rectory Lane.
17. The use of the land for the siting of caravans fails to accord with the general pattern and grain of the development within proximity of the site. It is not of a scale or design appropriate to such a rural setting. Additionally, the provision of high density, non-permanent, temporary accommodation for off-site workers fails to accord with the rural setting and is at odds with the character of the area.
18. The development lies outside of the settlement envelope and therefore is not supported by Policy DM4 of the CS, which supports development within the settlement envelopes. I have had regard to the appeal<sup>2</sup> provided by the appellant concerning the consistency of this policy with the National Planning Policy Framework (the Framework). I concur with the Inspector's findings that Policy DM4 does not explicitly prevent (or seek to prevent) development from occurring outside of the settlement envelopes. Instead, it requires the decision-maker to consider other development plan policies in order to identify whether harm would arise or not. In that respect, I have considered the acceptability of

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<sup>2</sup> APP/P0240/W/17/3176444

the proposal in respect of the development plan as a whole and find that there is significant harm with regard to the character and appearance of the area.

19. For the reasons above, I conclude that the use of the site as a residential caravan site would be contrary to the requirements of Policies DM3, DM4, CS14 and CS16 of the CS and DMP for new high quality development to respect its setting and conserve and enhance the countryside and local distinctiveness of an area.

*Living conditions – noise*

20. To the north of the site is a commercial workshop with unrestricted hours of operation. The caravans are positioned close to this boundary with a mature hedgerow in between. By the nature of their construction, and more specifically for touring caravans, by the nature of their proposed use as occasional accommodation, the caravans have limited sound insulation. The Council consider that workers who occupy the caravans may be shift workers and their hours for sleeping may fall during the day when it is likely that there will be higher levels of noise.
21. The appellant has provided a noise assessment which, in its summary, demonstrates that acceptable external and internal noise levels would be readily achieved for residents. However, this assessment appears to have been undertaken having regard to the proposed development of the site with housing rather than caravans. Furthermore, the summary suggests the use of a planning condition to require a scheme for protecting the proposed residential development from noise.
22. Overall, I am not convinced that occupiers of the caravans would be protected from noise disturbance from the adjoining site. I therefore conclude that there is an unacceptable risk that the development would cause harm to the living conditions of the occupiers of the caravans. Such development would conflict with Policy DM3 which requires high quality development to comply with the current guidance on noise, amongst other matters, and the Framework which promotes development with a high standard of amenity for existing and future users.

*Living conditions – open space*

23. The caravans are situated within close proximity of each other and allow for very limited outdoor space. There are no physical boundaries which separate the units and the limited outdoor space which does exist provides no privacy. I note the suggested alternative layout for the caravans within the site. However, the numbers remain the same and there appears to be no dedicated area for parking. It is likely that even with the alternative layout, there would remain an intensive residential environment with an unacceptable low level of open space for the occupier of each caravan.
24. In this respect the development conflicts with policy DM3 which seeks high quality development that respects the amenity of surrounding properties and the Framework which champions well-designed places. The Council refer to the principles set out in the 2014 Central Bedfordshire's Design Guide. However, this guidance does not appear to refer to design principles of caravan sites and consequently reference to it is misplaced.

### *Highway safety*

25. The Council's concerns in terms of highway safety relate to the existing vehicular access, which it considers unacceptable due to its twisted orientation and restricted visibility. The proposed use of the site is for the residential use of the existing caravans which would remain on site, apart from when they are replaced. The traffic generated would therefore be limited to cars and/or vans. In these circumstances, the 'twisted orientation' of the access would unlikely be problematic. Furthermore, the access is wide and with land either side within the appellant's ownership, could extend splays either side to increase visibility. From my site-observations, it appeared that the site entrance would allow for safe access onto Rectory Lane, which is likely to have limited vehicle movements due to the lane being a dead-end with fewer properties.
26. However, the lawful use of the site as a residential caravan site could allow the site to be used by those with their own caravans. This would alter the nature of the vehicular movements with touring caravans accessing the site. The road is narrow, and the restricted access would likely result in caravans attached to vehicles manoeuvring onto the wrong side of the road on exiting the site. However, the lane is lightly trafficked, and the movement of caravans would likely be staggered. The impact on highway safety would be limited.
27. Accordingly, I conclude that the proposal would not be unacceptable on highway safety grounds and in this respect, the development complies with Policy DM3 of the CS which, among other matters, seek new developments to incorporate appropriate access arrangements.

### **Other matters**

28. The appellant refers me to a guide to setting up a Certificated Location in accordance with the Caravan Sites and Control of Development Act 1960. This would allow up to 5 caravans to occupy the land and is significantly different from the proposal before me and I give this limited weight.
29. I am also reminded that it may be possible for the appellant to convert the agricultural building to a residential use under permitted development rights. That may be a fall-back position, but any such proposition would first have to be put before the Local Planning Authority. Furthermore, no detail has been supplied in relation to such a scheme and on the basis of the evidence before me, I afford it limited weight.
30. The Framework promotes supporting a prosperous rural economy the sustainable growth and expansion of all types of business in rural areas and the diversification of agricultural and other land-based rural businesses. Such development should be sensitive to its surroundings and contribute to the rural community. I note there may be potential economic benefits by providing temporary accommodation for contract workers for nearby businesses. However, these do not outweigh the harm arising from the development by way of its inappropriateness and failure to accord with Policies DM3, DM4 and CS14 of the CS.
31. For the reasons given above, the appeal on ground (a) fails.

### **The appeal on ground (f)**

32. An appeal on ground (f) is a claim that the requirements of the notice are excessive and lesser steps would overcome the breach of planning control.
33. The appellant considers there is no element of certainty as to what is meant by the requirement to remove 'service pitch installations'. To provide clarity, and as suggested by the Council, the requirements of the notice should be corrected to include electricity "hook up" units and LPG cylinders, which are considered 'service pitch installations'.
34. The appellant raises the concern regarding over-enforcement due to the inclusion of the agricultural building as identified on the plan. Within the agricultural building is a shower cubicle available for use by tenants of the caravans. The remainder of the building is given over to the storage of various items, details of the ownership of which is unclear. Although the notice includes the building within the site plan, the Council make no reference to it within the requirements of the notice.
35. The omission within the text of the notice regarding the use of the building may serve to under-enforce that element. Nevertheless, compliance with the requirements of the notice would naturally lead to the cessation of the use of agricultural building in association with the residential use of the site and its inclusion is considered appropriate.
36. For the reasons given above, the appeal on ground (f) partly succeeds. The steps, as varied, do not exceed what is necessary to remedy the breach.

### **The appeal on ground (g)**

37. The appeal on ground (g) is that the period for compliance with the notices falls short of what is reasonable. The appellants consider that a compliance period of 6 months is insufficient to ensure compliance with each requirement due to the timing of tenancy agreements. It is considered that if a tenant's notice period expired close to the time for compliance with the notice, there would be a short period of time to comply with the remedial works required by steps 2 and 3.
38. Consequently, I consider that the stated compliance period of 6 months should be extended to 7 months. This would be an adequate period for complying fully with the requirements of the notice. For these reasons, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it.
39. The appeal on ground (g) succeeds to that extent.

### **Conclusion**

40. For the reasons given above, I conclude, overall, that the appeal should not succeed. I have upheld the enforcement notice with corrections and variations and refused to grant planning permission on the application deemed.

*S Hanson*

INSPECTOR