



Appeal Decisions

Site visit made on 2 June 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal A: APP/R2330/C/19/3243453

Appeal B: APP/R2330/C/19/3243454

Land at Higher Rhoden Farm, New Lane, Oswaldtwistle BB5 3QL

- 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 Mrs Carole McSorley (Appeal A) and Mr John McSorley (Appeal B) against an enforcement notice issued by Hyndburn Borough Council.
- The enforcement notice was issued on 20 November 2019.
- The breach of planning control as alleged in the notice is : Without planning permission, the change of use of Land from the use as agricultural land to use for the siting of two static caravans for residential purposes on a purpose laid area of hard standing; associated storage containers and domestic paraphernalia.
- The requirements of the notice are:
 - (i) Permanently cease the use of Land for the siting of 2 static caravans; and
 - (ii) Permanently remove from the Land the two static caravans, associated storage containers and domestic paraphernalia (the approximate position of these developments are marked with 'X' on the attached plan) and all materials associated with the siting and use of the static caravans; and
 - (iii) Take up from the Land the hard standing situated on the area edged in blue on the attached plan and remove it from the land together with any rubble arising from compliance with this step and steps (i) and (ii) above; and
 - (iv) Reinstate the Land to its condition prior to the breach by levelling the ground and restoring to its previous condition.
- The period for compliance with the requirements is
 - Step (i) – Four (4) months after this notice takes effect.
 - Step (ii) – Six (6) months after this notice takes effect.
 - Step (iii) – Eight (8) months after this notice takes effect
 - Step (iv) – Nine (9) months after this notice takes effect
- The appeals are proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decisions

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

- Deleting the word "Oswaldtwistle" in paragraph 2 and substituting it with "Oswaldtwistle".
- Deleting the wording at paragraph 3 and substituting it with "Without planning permission, the material change of use of Land from the use as agricultural land to a mixed use comprising agriculture and use for the siting of two static caravans for residential purposes on a purpose laid

area of hard standing; associated storage containers for residential purposes and domestic paraphernalia.”

2. Subject to these corrections Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Enforcement Notice

3. I have corrected a typographical error in the spelling of “Oswaltdtwistle” in the address of the Land to which the notice relates.
4. The breach of planning control alleged in the notice is a material change of use in the Land and the period for taking enforcement action is ten years beginning with the date of the breach (s171B (3)).
5. However, the appellants consider that the time limit for taking enforcement action in this case should be after the end of a four year period. They consider that the siting of the static caravans has involved building operations and the caravans are therefore buildings. Pursuant to section 171B (1), where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after four years beginning with the date on which the operations were substantially complete.
6. In section 29 of the Caravan Site and Control of Development Act 1960 (as amended) “caravan” is interpreted to mean any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.
7. From my own observations on my site visit and the evidence before me, the caravan which is situated adjacent to the site entrance and is the most northerly caravan on the land (Caravan 1), has been sited with the aid of a scaffolding structure. The scaffolding that has been erected provides a level base in a location where the ground levels are sloping. It also supports the decked walkway/balcony which abuts the north and eastern side of Caravan 1. A blockwork skirt wall has also been constructed beneath the northern side of the caravan to help support the caravan chassis.
8. The caravan is attached to mains water, electricity and sewerage, however these services could be easily disconnected. The chassis has also been bolted to the scaffolding and some cementing has taken place to help secure it. These fixings do provide the caravan with a degree of physical attachment and permanence. However, these works have been undertaken purely to facilitate the siting of the caravan in a location where the ground is not level.
9. If a caravan remains mobile then the likelihood is that a use of land is involved. “Mobility” does not require the caravan to be mobile in the sense of being moved on its own wheels and axles. It is sufficient that the unit can be picked up intact (including its floor and roof) and put on a lorry by a crane or hoist. In this case, I saw nothing on my visit that indicated from the physical appearance and the attachment of the caravan to the scaffolding, walkway/balcony and blockwork that they were intrinsically connected and part of a single structure.

10. The second caravan (Caravan 2) which lies to the south of Caravan 1 has been sited on a hardcore base and attached to the base by metal brackets and bolts. Concrete flags provide an apron around the caravan. Furthermore, the static caravans do not exceed the dimensions given in the statutory definition of a caravan and there is no evidence that the caravan structures were assembled on site.
11. Given the level of attachment it would not be necessary to employ a builder to release either the chassis of Caravan 1 from the supporting structure, or in the case of Caravan 2, to release the bolts. The caravans could then be easily transported from the site to another location as single entities.
12. On the evidence before, and as a matter of fact and degree, I consider that the development that has taken place in this case is a material change in the use of the Land and not a building operation.
13. I have taken into consideration the appellants' submission that the storage containers are temporary and used in connection with building works elsewhere on the Land. However, I have not been provided with any substantive evidence that would demonstrate that they are not associated with the residential use of the static caravans. The one container which I was able to view internally on site was clearly used as a laundry and for ancillary domestic storage.
14. Taking into account all of the above, I am satisfied that the breach of planning control set out in the notice adequately describes the unauthorised development that has taken place. However, the Land identified on the plan attached to the notice also includes adjoining agricultural land. In the interests of clarity I shall therefore correct the notice by deleting the wording at paragraph 3 and substituting it with "Without planning permission, the material change of use of Land from the use as agricultural land to a mixed use comprising agriculture and use for the siting of two static caravans for residential purposes on a purpose laid area of hard standing; associated storage containers for residential purposes and domestic paraphernalia." I am satisfied that there would be no injustice to either party in my making this correction which does not alter the purpose of the notice.

Appeals A and B: ground (d)

15. The enforcement notice was issued on 20 November 2019. Therefore, the onus is on the appellants to show on the balance of probability that the change of use took place on or before 20 November 2009 and continued for an uninterrupted period thereafter.
16. There is no dispute between the main parties that the caravans were brought onto the Land after 20 November 2009. The appellants advise that Caravan 1 has been stationed on the land since 2012 and Caravan 2 was relocated to the site in 2015. The dispute as set out in the Enforcement Notice section above, is whether the caravans are buildings, which I have found not to be the case. Furthermore, I have not been provided with any substantive evidence that would support the appellants' claim that the hard standing areas were laid on or before 20 November 2009. The concrete flags which flank the caravans have been laid to facilitate their residential use and it is therefore more than likely that they were laid when the caravans were first installed. The aerial images provided in the Council's expediency report for the enforcement notice,

support that view. There is no visual evidence in the 2011 image of either the storage containers or the hard standing area.

17. Consequently, the circumstances of this case are such that I am not satisfied that the appellants' evidence is sufficiently precise or unambiguous to conclude on the balance of probability that the use in question is immune from enforcement action.
18. I conclude that the use of the land as a mixed use comprising agriculture and use for the siting of two static caravans for residential purposes on a purpose laid area of hard standing; associated storage containers for residential purposes and domestic paraphernalia has not become lawful due to the passage of time. The appeals on ground (d) do not succeed.

Human Rights

19. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. My consideration is directed to the compliance periods, bearing in mind that no appeals have been made on ground (d). I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellants' rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action pursues the legitimate aim of regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusion

20. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeals should not succeed, and I shall uphold the enforcement notice with corrections.

Elizabeth Pleasant

INSPECTOR