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## Appeal Decisions

Site visit made on 9 June 2020

**by Sarah Dyer BA BTP MRTPI MCMI**

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

**Decision date: 26 June 2020**

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### **Appeal A Ref: APP/L2630/C/20/3247322**

#### **Wood Farmhouse, Wood Lane, Pulham Market, Norfolk IP21 4XU**

- 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 P Pilcher against an enforcement notice issued by South Norfolk District Council.
  - The enforcement notice, numbered 2019/8007, was issued on 23 January 2020.
  - The breach of planning control as alleged in the notice is without planning permission, change of use of land from land used as residential curtilage to land used for the standing of a residential mobile home used independently from the main residential dwelling.
  - The requirements of the notice are:
    - a) Cease the residential use of the mobile home
    - b) Remove the mobile home from the site in its entirety.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)[a] 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.
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### **Appeal B Ref: APP/L2630/W/20/3247318**

#### **Wood Farmhouse, Wood Lane, Pulham Market, Norfolk IP21 4XU**

- 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 P Pilcher against the decision of South Norfolk District Council.
  - The application Ref 2019/0872, dated 15 April 2019, was refused by notice dated 24 October 2019.
  - The development is described as 'regularisation application for retention of mobile home for family member (annex) for a five year period'.
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## **Decision**

1. Appeal A is dismissed, the enforcement notice is upheld, and the deemed planning application is refused.
2. Appeal B is dismissed.

### **Application for costs**

3. An application for costs was made by Mr P Pilcher against South Norfolk District Council in respect of Appeal B. This application is the subject of a separate Decision.

### **Procedural Matter (Appeal A and Appeal B)**

4. The alleged unlawful development set out in Appeal A is not the same as the description of development set out in Appeal B. In relation to Appeal A the deemed planning application (DPA) derives its terms directly from the words of the allegation, those being the matters stated in the notice as constituting a breach of planning control. Therefore, the DPA if granted would be in respect of 'change of use of land from land used as residential curtilage to land used for the standing of a residential mobile home used independently from the main residential dwelling'.
5. In the case of Appeal B were I to allow the appeal this would result in planning permission being granted for 'the retention of mobile home for family member (annex) for a five year period' as set out on the application form which was accepted by the Council and used in the description of development on its decision notice.
6. For these reasons I have dealt with the appeals separately but, as the appeals relate to the same mobile home, with reference to the evidence submitted by both main parties on both appeals.

### **Appeal A – ground (a) and the DPA**

7. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

### **Main Issues**

8. The reasons which the Council gives for issuing the notice include the lack of compliance with Policy DM 3.7 of the South Norfolk Local Plan Development Management Policies Document 2015 (the DMPD) which relates to residential annexes. This reason is not relevant to the DPA because the allegation relates to a mobile home used independently from the main residential dwelling and not an annexe. On that basis the main issues are:
  - Whether the appeal site is a suitable location for a mobile home having regard to local services and associated infrastructure; and
  - The effect of the development on the setting of a Grade II listed building (Wood Farmhouse) which is a heritage asset.

### **Reasons**

#### *Location of development*

9. There is no dispute between the main parties that the appeal site falls outside any settlement with development boundaries where the Council focuses development to protect and enhance the vitality of these settlements. The Council's strategy is consistent with the aims of the National Planning Policy Framework (the Framework) of promoting sustainable development in rural

areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities.

10. Policy DM 1.3 of the DMPD only supports development in the countryside outside the defined development boundaries of settlements where it is permitted by specific policies or where it has overriding benefits in terms of economic, social or environmental dimensions. There is no evidence before me that the use of the site for the standing of a mobile home is permitted by such policies or that it would result in those benefits.
11. Wood Lane is a typical country road serving sporadic development primarily associated with agriculture. By its nature it would not be attractive as a route to access shops and services by foot or cycle in the wider area particularly during the hours of darkness or in inclement weather. There is no evidence of bus stops in the vicinity of the site or information before me regarding bus routes and timetables which could provide a practical means by which to access these facilities.
12. Given the inadequacy of access it is likely that future occupants of the development would be heavily reliant on private motor vehicles to access local shops and services. It is therefore not a location where new residents would be well served by sustainable modes of transport and this is a significant factor weighing against the scheme.
13. In combination the lack of justification for development in the countryside and the likely dependence on motor vehicles render the site an unsuitable location for a mobile home having regard to local services and associated infrastructure. The development therefore fails to accord with Policy DM 1.3 of the DMPD and is contrary to Policy 1 of the Greater Norwich Development Partnership Joint Core Strategy for Broadland, Norwich and South Norfolk (2011/2014) and Policy DM 3.10 of the DMPD which require development to minimise the need to travel and promote sustainable transport.

#### *Impact on heritage asset*

14. Wood Farmhouse is a Grade II listed building but there is very limited evidence before me to describe the significance of this heritage asset. From my observations during the site visit I noted that the setting of Wood Farmhouse is characterised by its position set back from the Wood Lane, the attractive tree lined driveway to it and the stables and paddocks which surround it.
15. There are stable buildings between the mobile home and Wood Farmhouse which provide an effective screen in views of the listed building from the lane. However, the site of the mobile home forms part of the immediate setting of the listed building and its design and appearance is at odds with the natural environment and traditional materials of the buildings close to it, including Wood Farmhouse. This constitutes harm to the setting of the listed building.
16. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the PLBCA Act) is a matter of considerable importance and weight. As a consequence of its siting, design and appearance, the mobile home has a harmful impact on the listed building by virtue of an adverse impact on its setting. However, the proposal would not lead to the loss of the building or any of its special features. As such, whilst material, I find that the harm would be less than substantial. Paragraph 196 of the Framework

directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.

17. In this case the appellant accepts that there are no public benefits arising from the development. Whilst he considers that the development would not cause any public loss, this is not the test which needs to be applied. Consequently, public benefits would not outweigh the harm to the designated heritage asset that I have found in this instance.
18. I conclude that the mobile home has a harmful effect on Wood Farmhouse which is a designated heritage asset. The development is contrary to Policy DM 4.10 of the DMPD which amongst other things places considerable importance and weight on the desirability of preserving listed buildings and their settings.

### **Conclusion (Appeal A)**

19. For the reasons set out above, I conclude that appeal A should be dismissed, that the enforcement notice should be upheld and that the deemed planning application should be refused.

### **Appeal B**

#### **Procedural Matter (Appeal B)**

20. Appeal B is an appeal against a refusal of planning permission. The application which was made sought planning permission for the retention of a mobile home for a family member (annex) for a five-year period. The Council accepted the application on the basis of that description and used the same description of the proposal on the decision notice. However, in its consideration of the application the Council has posed the question of whether or not the mobile home can be considered as an annexe and having found this not to be the case it has assessed the scheme on the basis that the mobile home could be considered as a new dwelling.
21. As a result of the approach which the Council has adopted to its consideration of the application it has gone beyond an assessment of the development as described by the appellant in his planning application. The use of a mobile home as a separate dwelling, as opposed to an annex, also constitutes development for which planning permission would be required, but that is not the development which was before the Council.
22. Notwithstanding my findings in respect of Appeal A, I cannot consider Appeal B, which relates to the use of a mobile home as an annex, on the basis of its use as a separate dwelling.

### **Main Issues**

23. For the reasons set out above, the Council's second and third reasons for the refusal of planning permission relating to the location of the appeal site relative to the development boundaries of settlements or in terms of proximity to services and facilities do not fall to be considered as they do not relate to the use of the mobile home as an annex to Wood Farmhouse.
24. Although the fourth reason for refusal also references the use of the annex as a new dwelling, matters relating to the effect of the development on Wood Farmhouse, as a designated heritage asset, fall to be considered. This is

because the annex in itself amounts to development and there is a statutory duty under Section 66(1) of the PLBCA Act to consider the impact of any development on a listed building or its setting.

25. The main issues are, therefore:

- Whether or not the mobile home has been designed so that it can continue to be used as part of the main dwelling, without creating an independent dwelling.
- The effect of the development on the setting of a Grade II listed building (Wood Farmhouse) which is a heritage asset.

## **Reasons**

### *Design of mobile home (annex)*

26. Policy DM 3.7 of the DMPD is supportive of proposals for residential annex accommodation where it is so designed that it can continue to be used as part of the main dwelling. The Council states in its reason for refusal that in its view the development is contrary to Policy DM 3.7 on the basis of the nature and siting of the mobile home.
27. The supporting text to Policy DM 3.7 refers to the potential for caravans and mobile homes to be approved for use as annex accommodation. This is an aid to the interpretation of policy, but it is not itself policy. Nevertheless, it clarifies that these forms of residential annexe may be acceptable to the Council.
28. In terms of the nature of the mobile home, the Council does not consider that it meets Policy DM 3.7 because it can be used independently from the main dwelling. In this particular case, notwithstanding that a mobile home can be an acceptable form of annex accommodation to the Council, it is argued that this particular mobile home is not appropriate.
29. In terms of the siting of the mobile home, the Council argues that the mobile home is removed from the main dwelling such that it has its own garden space which further enhances the potential for it to be occupied independently.
30. There is no dispute between the parties that the mobile home could be occupied independently from Wood Farmhouse. But the appellant argues that it is not being used in such a way.
31. The test to be applied by Policy DM 3.7 requires a demonstration that the design of the annexe allows for it to continue to be part of the main dwelling. The policy has to be read on its plain words. Regardless of the way in which the annex is currently used its design lends itself to it being used as an independent dwelling and its siting would provide a degree of separation such that privacy and facilities such as parking space and bin storage could be provided. To that extent the mobile home does not accord with Policy DM 3.7.
32. The appellant argues that the temporary nature of the mobile home is a benefit because it would fulfil the temporary needs of his family, without becoming a long-term feature of the site. He also says that the mobile home is needed until such time as his daughter, who occupies it, can afford to buy or rent her own property. However, there is no substantive evidence to demonstrate this need.

33. Furthermore, there is very limited evidence to demonstrate the functional relationship between the use of the mobile home and the use of the main house such that the occupiers of the mobile home share facilities with occupiers of the main house and its annex. On this basis I am not convinced that the appellants suggestion of a planning condition to ensure that the mobile home cannot be sold off or rented out as a separate unit of accommodation or occupied by a person who is not connected with someone at the main dwelling would be sufficient to ensure that the mobile home is used as an annex.
34. The appellant has also suggested that the occupation of the mobile home could be controlled through a legal agreement. However, there is no such legal agreement before me, therefore this suggestion carries no weight in my determination of the appeal.
35. Drawing all of these strands together the evidence confirms that the mobile home has not been designed so that it can continue to be used as part of the main dwelling, without creating an independent dwelling. The development is therefore contrary to Policy DM 3.7 of the DMPD.

#### *Impact on heritage asset*

36. I have already found that the site of the mobile home forms part of the immediate setting of Wood Farmhouse which is a listed building and its design and appearance is at odds with the natural environment and traditional materials of the buildings close to it, including Wood Farmhouse. This constitutes harm to the setting of the listed building and the same effect arises from the mobile home in use as an annex. In common with the use of the mobile home as an independent dwelling, there are no public benefits before me which outweigh this harm.
37. I have given careful thought to the appellant's view that a restriction on the siting of the mobile home for a period of 5 years would remove the impact of it on the setting of the listed building after that time. However, as I have already said the statutory duty in Section 66 (1) of the PLBCA Act is a matter of considerable importance and weight and in this case even a temporary impact on the setting of Wood Farmhouse is not acceptable or justified.
38. I conclude that the retention of the mobile home for family member (annex) for a five year period has a harmful effect on Wood Farmhouse which is a designated heritage asset. The development is contrary to Policy DM 4.10 of the DMPD which amongst other things places considerable importance and weight on the desirability of preserving listed buildings and their settings.

#### **Other matters**

39. The appellant has referred to an appeal which related to the conversion of an ancillary outbuilding to residential annex at The Barns, 204 Northwood Road, Harefield, Uxbridge (Appeal Ref. APP/R5510/X/18/3206551) (the Uxbridge appeal). He considers that the appeal scheme follows the same patterns as that appeal. However, whilst both proposals relate to a residential annex there are some key differences.
40. The Uxbridge appeal related to an application for a certificate of lawfulness, consequently the planning merits of the scheme were not relevant. As a result of this the Inspector in that case did not have regard to any local plan policies, notwithstanding that the appeal site was not in East Suffolk and the relevant

local plan may not have contained a policy such as Policy DM 3.7. Furthermore, there is nothing in the Uxbridge appeal decision to suggest that the annex in that case would have any impact on a heritage asset. On the basis of these differences I do not find that the Uxbridge appeal is directly comparable with this appeal and it attracts limited weight in my determination.

41. The appellant argues that in the light of the effects of the Covid-19 pandemic it is generally beneficial to have ancillary accommodation which provides opportunities for home working and essential overspill accommodation. He considers that this is a relevant matter as it relates to public safety. However, on the basis of the evidence before me I am not convinced that in the event that the appeal is dismissed the outcome would have a significant effect on public safety. Even had that been proven, it would not have outweighed the harm which I have identified.

### **Conclusions (Appeal B)**

42. The appeal scheme is contrary to Policy DM 3.7 and Policy DM 4.10 of the local plan which is the development plan for the area. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless other material considerations suggest otherwise. In this case the material considerations have not led me to conclude otherwise than that the appeal should be dismissed.
43. For the reasons set out above Appeal B is dismissed.

*Sarah Dyer*

Inspector