



Appeal Decisions

Inquiry Held on 3 - 4 December 2019

Site visit made on 4 December 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 30 June 2020

2 Appeals at Land adjacent to Moss Nursery, Sedge Green, Nazeing, Essex, CM19 5JR

Appeal A: APP/J1535/C/18/3211883

Appeal B: APP/J1535/C/18/3211884

- 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 Mr Noah Spencer (Appeal B) and Mrs Denise Spencer (Appeal A) against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, numbered DG/EB/LEG/647, was issued on 15 August 2018.
 - The breach of planning control as alleged in the notice is the material change of use of the Land from agriculture to residential use including the stationing of mobile homes/caravans for residential use purposes.
 - The requirements of the notice are (i) Cease the residential use of the Land; (ii) Cease the use of the Land for the stationing of mobile homes/caravans for residential purposes; (iii) Remove the mobile homes/caravans from the Land; (iv) Remove all commercial vehicles from the Land; (iv) (*sic*) Remove the hardstanding and surrounding fence; (v) remove and septic tanks and drains; (vi) Remove the front gates and piers or reduce them to 1m in height; and (vii) Remove all resultant debris from the Land
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (Appeal A only), (b), (c), (f) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. The appeals succeed on ground (b) (in part) and ground (c). It is directed that the enforcement notice therefore be varied by the deletion of the allegation and the substitution therefore of the wording '*the material change of use of the Land to the stationing of a mobile home/caravan for residential purposes.*' Subject to this variation the appeal is allowed and the enforcement notice is quashed.

Main Issues

2. I consider the main issues in this case are:

on ground (b): whether the alleged breach has occurred as a matter of fact (in respect of the 'residential use of the land')

on ground (c): whether the alleged development requires a grant of planning permission to authorise it

and, if these grounds fail,

on ground (a):

(i) whether the development is inappropriate in the Green Belt and if so, whether there are any material considerations that outweigh the harm caused by such development, and any other harm, sufficient to amount to the very special circumstances that would be required before planning permission could be granted.

(ii) the effect of the development on (a) flood risk in the area and (b) the Epping Forest Special Area of Conservation (SAC).

and if this ground of appeal fails:

on ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control or injury to amenity.

Planning history

3. The appeal site and the surrounding land have a long planning and enforcement history that was discussed in detail at the Inquiry. In summary, it was confirmed at appeal¹ in 1982 that *'the stationing of a caravan for human habitation'* on a parcel of land that includes the appeal site with the registered title number of EX20963, then known as Beggars Roost, was lawful. A bungalow was also granted planning permission in 1984² on this land.
4. In about 1990, the site was split and became known as 'Beggars Roost' (to the north east) and as 'Moss Nursery' (to the south west). The application plan for the bungalow included the whole of EX20963, although by 2000, an application³ for further works to the bungalow included only the extreme north eastern part of the original site where the bungalow is situated.
5. The Moss Nursery site now has the registered title number EX430698 and the appeal site lies between this and the land now known as 'Beggars Roost'. In 1992 an enforcement notice was issued against a second mobile home on land that included the Moss Nursery site and most of the current appeal site but excluded 'Beggars Roost'. An appeal against the notice was dismissed.
6. In 1996 the Council enforced against the material change of use of Moss Nursery and about half of the appeal site from *'the stationing of one caravan for human habitation'* to *'the stationing of several caravans for human habitation'*. The notice was upheld at appeal but the Inspector reduced the size of the plot to cover only the Moss Nursery land and omitted the section of the current appeal site, which he found to be in a different ownership.
7. In 2005, planning permission⁴ was granted for the *'retention of a second mobile home'* on the Moss Nursery site. In 2013, the Council granted planning permission⁵ for the *'stationing of 3 additional Gypsy mobile homes/caravans for permanent occupation'* also on the Moss Nursery site. Neither of these permissions included the appeal site on the application plans. The Council does not dispute that up to 5 caravans could be stationed for the purpose of human habitation on the Moss Nursery land.

¹ Ref: APP/5215/C/81/3730/G4 & 3849/G4

² Ref: EPF/4887/84

³ Ref: EPF/1993/2000

⁴ Ref: EPF/2200/2004

⁵ Ref: EPF/0258/13

Site and surroundings

8. The appeal site lies within the Green Belt and, as noted above, has an authorised gypsy and traveller site to the south west (Moss Nursery) and a residential bungalow (Beggars Roost) to the north east. The land to the north west is marshland within the Lea Valley Regional Park and there are large scale greenhouses serving a fruit and vegetable business to the south east.

S106 Planning Obligation

9. The appellants note that it is presently lawful to station up to 5 caravans on the Moss Nursery site and, as noted above, the Council does not dispute this. However, if the appeal on ground (c) fails, the appellants have submitted a planning obligation under s106 of the Town and Country Planning Act 1990 (TCPA) which confirms that, if planning permission were to be granted under the deemed planning application for the mobile home on the appeal site, they would undertake not to station more than 3 mobile homes on Moss Nursery.
10. Whilst there is a dispute between the parties as to whether additional caravans could be placed on Moss Nursery without the need for a further planning permission, the undertaking would, in the worst case scenario, amount to a potential net reduction of 1 mobile home across the combined sites.

Reasons

Ground (b)

11. The appellants criticise the wording of the enforcement notice, submitting that a '*residential use*' is not development referred to in the TCPA and it is therefore incorrect to refer to the breach of planning control as the '*residential use of the land*'. They suggest that the wording should be changed to reflect the fact that the breach, and the requirements, should refer to '*the stationing of caravans for residential purposes*'. I agree that this is how the development that has taken place on the site should be described and I will correct the notice accordingly.
12. They also submit that the appeal has not been used for agriculture since at least 1947, as the finding of the Inspector in the 1982 appeal confirmed. However, the current lawful use of the site will be discussed under the appeal on ground (c) below.

Ground (c)

13. The appellants argue that the appeal site, (the land between Moss Nursery and Beggars Roost), still benefits from the original confirmation, in 1982, that a caravan for human habitation could be stationed on it. They submit that the findings in that Decision did not specify any agricultural or mixed use of the site at the time, contrary to the submissions of the Council. I consider the appellants interpretation to be correct. The 1981 enforcement notice, subject of the 1982, appeal cited a '*material change of use of the land to use for the purposes of stationing a caravan for human habitation*' and that notice was quashed. That appeal decision therefore established the lawful use of the land at that time and there is no reference to an agricultural use. I have been given no evidence to suggest that there has been any active agricultural use of the site since the date of that Decision. I will amend the current enforcement notice accordingly.

14. The appellants also submit that a caravan could have been sited anywhere on the original EX20963 land and that this right has not been extinguished by any subsequent permissions. They argue that the formation of new planning units to either side of the appeal site has not extinguished the lawful use for the stationing of one caravan on the appeal site.
15. The Council submits that the other 2 parcels of land on either side of the appeal site now form different planning units with their own planning history, and the extent of the changes to the original parcel of land is such that the use of the appeal site for the stationing of a caravan has now been lost. The question is, therefore, whether the appeal site still retains the use it originally had for the stationing of one caravan or mobile home even though the parcel of land that had this established use has now been split into 3 separate areas, which have had different ownerships and additional permissions granted in respect of them over the years.
16. However, the plan attached to the enforcement notice from 1992 includes most of the appeal site and prevents the stationing of a second mobile home on it. The implication of enforcing against the '*second mobile home*' is that, at that time, the Council accepted that a single mobile home could be sited on the land, despite the 1984 planning permission for the bungalow. That planning permission was the last to cover the appeal site but there is no condition attached to it that required the removal of any caravan that might have been permitted to remain on the site through the 1982 appeal.
17. Consequently the 1992 notice would not prevent the stationing of the 'lawful' mobile home established in 1982 on the appeal site, provided it was the only one attempting to benefit from that Decision. The grant of planning permission for a second mobile home on the Moss Nursery site in 2005 does not include the appeal site but, in my view, that means only that the second caravan could not be lawfully stationed on it. It does not restrict the positioning of the caravan confirmed as lawful in 1982 and the wording again indicates that the Council accepted that the Moss Nursery site still had a lawful use for the stationing of one caravan, despite the 1984 bungalow permission. In my view, there is no reason why this should not also apply to the appeal site.
18. Therefore, I am not persuaded that a change of ownership or the subsequent grant of the planning permissions noted above necessarily extinguished the lawful use of the appeal site established in 1982. I consider that the original existing use rights for the stationing of a separate caravan for human habitation that covered EX20963 and which have been accepted by the Council to continue on the Moss Nursery site have also survived on the appeal site and were not extinguished by the planning permission for the bungalow or the subsequent planning permissions for the Moss Nursery section of the original parcel of land.
19. However, the mobile home/caravan that was found to be lawful was placed on the Moss Nursery site by at least 1996, when the appeal site was in a separate ownership, as confirmed in the appeal against the enforcement notice issued at that time⁶. The appellants agree that if the appeal site benefits from an established use for the stationing of one caravan, this right could not be exercised on the Moss Nursery site at the same time.

⁶ Ref: APP/C/96/J1535/644533

20. The plan attached to the enforcement notice under appeal does not include the Moss Nursery site. It may be that, when the appeal site is considered together with Moss Nursery, the total number of authorised caravans would be exceeded but this is not a matter before me at this Inquiry. I have been asked to determine whether the stationing of a caravan for the purposes of human habitation on the appeal site is lawful in this ground (c) appeal. Therefore, whether the present number of caravans on the Moss Nursery site is lawful is not a matter that is relevant to my findings in respect of the appeal site.
21. Should the Council consider that the caravans on the two sites combined exceed the authorised number and that there are now more than the 'lawful' caravan and the additional 4 granted planning permission, it would need to take enforcement action across both of them. However, as I have concluded that the appeal site still benefits from the right to station a caravan for the purposes of human habitation, the appeal on ground (c) therefore succeeds in this respect.

Ground (a)

22. The deemed planning application that is the subject of ground (a) can only be granted for development alleged in the notice. The allegation refers to *'the material change of use of the Land from agriculture to residential use including the stationing of mobile homes/caravans for residential use purposes'*. The other development referred to in the requirements of the notice is not therefore before me when considering whether planning permission for the alleged breach should be granted. As I have found that the alleged development does not require a grant of planning permission to authorise it, ground (a) no longer falls to be considered.

Ground (f)

23. There are matters referred to in the requirements that are not cited in the allegation. These include operational development such as fencing and gates, hardstanding and a septic tank and drains as well as the use of the land for the stationing of commercial vehicles. Once again, these do not fall to be considered under an appeal on ground (f), where the appeal has succeeded on ground (c) and there is consequently no need to determine a deemed planning application. Once again, if the Council considered that these matters do not benefit from planning permission, they have the option of taking separate enforcement action against them.

Conclusions

24. For the reasons given above I conclude that the appeal should succeed on grounds (b) (in part) and (c). Accordingly, the enforcement notice will be quashed following variations. In these circumstances the appeal under the ground (f) as set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	Of Counsel
He called	
Matthew Green	Green Planning Studio
Bob Sargent CSci, CENV, BA(Hons) MBA	Geosmart Information

FOR THE LOCAL PLANNING AUTHORITY:

Charles Streeten	
He called	
Jeremy Godden MTP MRTPI	Planning Officer, Epping Forest District Council

DOCUMENTS

- 1 Statement of Common Ground
- 2 Opening statement for Epping Forest District Council
- 3 Mr Sargent's cv
- 4 Draft Unilateral Undertaking
- 5 Statement from Nazeing Parish Council
- 6 Geosmart Information's Technical Note on Air Quality and the impact of the development on the Epping Forest Special Area of Conservation
- 7 Council's comments on Geosmart Information's Technical Note
- 8 Closing Submissions for the Council
- 9 Closing Submissions for the Appellants
- 10 Signed Unilateral Undertaking
- 11 Note to accompany Unilateral Undertaking