



Appeal Decisions

Site visit made on 29 June 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2020

Appeal A: APP/L3815/C/18/3215551

Land at Cutmill Depot, Newells Lane, West Ashling, Chichester, West Sussex PO18 8DE

- 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 Garry Palmer against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 27 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the Land to use for the stationing of a mobile home and touring caravan for the purposes of human habitation.
 - The requirements of the notice are: (i) Cease the use of the Land for the stationing of the mobile home and touring caravan for the purposes of human habitation; (ii) Remove the mobile home, touring caravan and ancillary gas bottles from the Land; (iii) Demolish the brick skirt wall under the mobile home and the brick built front steps; (iv) Demolish the boundary wall including brick pillars and ornate railings in the approximate location shown on the Plan; and (v) Following compliance with steps (iii) and (iv) above, remove the resulting rubble 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), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the 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: APP/L3815/W/18/3208705

Cutmill Depot, Newells Lane, West Ashling PO18 8DE

- 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. Palmer against the decision of Chichester District Council.
 - The application Ref FU/18/00675/FUL, dated 15 March 2018, was refused by notice dated 13 June 2018.
 - The development proposed is described as: Stationing of a mobile home on the eastern part of the site.
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Appeal C: APP/L3815/W/18/3208696

Cutmills, Newells Lane, West Ashling PO18 8DE

- 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. Palmer against the decision of Chichester District Council.
 - The application Ref FU/18/00676/FUL, dated 15 March 2018, was refused by notice dated 13 June 2018.
 - The development proposed is: Erection of boundary wall in excess of 1m in height adjacent to highway.
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Procedural Matters

4. The appeals were to be heard by means of a Hearing however the parties subsequently agreed that the matters could be adequately determined by means of Written Representations. I have no reason to disagree with this conclusion and injustice to the parties would not arise from this course of action.
5. The appellant has submitted an undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 which would secure a financial contribution towards the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protection Area (the SPA). As this is intended to address one of the Council's objections to the unauthorised use, I have dealt with this within my decision under 'Other considerations'.
6. The appellant raises whether the Council had secured the necessary authorisation to issue the enforcement notice. This is however not a matter within my remit and can only be dealt with by way of judicial review.

The Enforcement Notice

7. The allegation does not specify that there has been a 'material' change of use of the land. It is however plain from the notice that a material change of use is being enforced against and so injustice to the parties would not arise from making this correction. Similarly, I shall also correct requirement 5. (i) so that it makes reference to 'a' as opposed 'the' mobile home and touring caravan so as to avoid the potential for particularising it to those presently on the site.

Appeal A – The ground (e) appeal

8. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land. The contention is that this ground of appeal should succeed as the appellant's first name has been spelt incorrectly. Whilst that was the case, it is clear the mistake was no more than a typographical error and it would thus have remained clear who was being served upon.
9. Furthermore, as an appeal has been lodged it cannot be said that the appellant has been substantially prejudiced by this mistake. He was evidently aware about the existence of the enforcement notice and was able to lodge an appeal within the relevant timeframe.
10. I conclude that consequently the appeal on ground (e) fails.

Appeal A – The ground (b) appeal and hidden ground (c) appeal

11. For the ground (b) appeal to succeed the appellant will need to demonstrate on the balance of probabilities that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
12. In this respect, the appellant contends that the touring caravan was not used for the purposes of human habitation and therefore this breach of planning control has not occurred. It is therefore pertinent to note that the stationing of a caravan is not development in itself, rather, it is the use of the land associated with the purpose for which the caravan is being used; in this case alleged as for the purposes of human habitation.
13. Whilst the appellant considers that this part of the allegation was based on pure surmises on the part of the Council, he must now demonstrate that this aspect of the allegation has not occurred. There is however very little evidence before me to demonstrate as a matter of fact and degree on the balance of probabilities that at the time the enforcement notice was issued this was not the case and with it that the breach of planning control alleged has not occurred as a matter of fact.
14. It is also contended that the mobile home is a replacement. As explained previously, it is not the stationing of a caravan (in this case a mobile home) that is development, but the purpose for which it, and therefore the land upon which it is stationed, is used that constitutes the material change of use. It is accordingly contended that the use of the land for the stationing of a mobile home for the purposes of human habitation (residential purposes) is lawful by virtue of a certificate of lawfulness¹. This is an argument more appropriately made as part of a ground (c) appeal. The Council has nevertheless addressed the point and so no injustice would arise, and I will consider it here as a hidden ground of appeal.
15. However, the site the subject of the certificate has been subdivided and now forms two separate planning units. Moreover, the area that was expressly identified for the stationing of one mobile home is different to that where the mobile home the subject of the enforcement notice is stationed, being part of the adjacent site on land not enforced against. In-addition, the stationing of one mobile home was only found to be lawful for use as an office and for residential purposes both ancillary to the use of the site as a scrap yard.
16. The evidence before me therefore does not demonstrate as a matter of fact and degree on the balance of probabilities that the use of the land for the stationing of a mobile home for human habitation, as enforced against, is a lawful replacement of that the subject of the certificate. It therefore has not been demonstrated on the balance of probabilities that there has not been a breach of planning control.
17. I consequently conclude that the appeal on ground (b) and the hidden ground (c) appeal must fail.

¹ As detailed in the Certificate of Lawful Use dated 21 December 1995, Council Ref FU/94/1497/CLD

Appeals A, B and C – The ground (a) appeal and refusals of planning permission

Main Issues

18. The main issues are:

- i. whether or not the site is in a suitable location for a residential use having regard to local and national planning policy; and,
- ii. the effect of the developments on the character and appearance of the area.

Reasons

19. The site is located in rural surroundings albeit adjacent to a railway line and with sporadic clusters of residential properties in the vicinity. There is otherwise a backdrop of open fields. The site itself formed part of a scrap yard but which has since been subdivided to that of the appeal site itself as well as what has been described as a waste transfer station.
20. The developments before me concern the refusals of planning permission for the stationing of a residential mobile home and a boundary wall adjacent to the highway as well as an enforcement notice directed at the same mobile home as well as a touring caravan for residential purposes.

Location

21. The site is located approximately midway between Chichester and Southbourne. For the purposes of the adopted Chichester Local Plan: Key Policies 2014-2029 (the LP), the site is located outside of any settlement boundary. Policy 1 of the LP identifies the presumption in favour of sustainable development. Policy 2 of the LP identifies the development strategy and settlement hierarchy. Accordingly, outside of settlement boundaries development is restricted to that which requires a countryside location or to meet an essential local rural need or support rural diversification. The Council's approach to residential development within the District is consistent with the housing approach set out in the National Planning Policy Framework (the Framework). The Council contends that it has an identified five-year supply of housing and the appellant does not appear to contest this position.
22. In order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality and sustainability of rural communities. The appellant highlights bus stops some 500m away from the site and that there is a primary school and shops in the area as well as a healthcare surgery which is said can cater for daily needs. There is also then a railway station. However, aside from the relative proximity of bus stops, these facilities are some distance from the site. The site is therefore not well related to an existing village and occupiers are likely to be heavily reliant upon a private car as the nearby roads are generally narrow, as well as unlit and without footways.
23. There is also little evidence about employment opportunities that could be accessed without being reliant upon a private car. I am therefore not persuaded on the evidence before me, including that of my site visit, that the site is in a sustainable location with safe access to public transport. It is

therefore not a location where a new residential use would normally be considered acceptable and is a significant factor weighing against the retention of the mobile home and touring caravan. There is also very little evidence to convince me that the residential use would enhance or maintain the vitality and sustainability of a rural community.

24. Policy 45 of the LP relates to development in the countryside. There is however no proven essential, small scale and local need before me and thus evidence that the site needs to be residentially occupied for purposes which cannot be met within or immediately adjacent to existing settlements.
25. I conclude that the site is not in a suitable location for a residential use having regard to local and national planning policy. The mobile home and touring caravan therefore conflict with Policies 1, 2 and 45 of the LP as well as the achieving sustainable development and rural housing objectives of the Framework.

Character and appearance

26. The mobile home is located in close proximity of the road frontage with public views readily obtainable. It is at-odds with the largely rural character of the area and is therefore visually discordant in this regard. I accept that the mobile home provides a high-quality living environment for occupiers and that the density of residential development is otherwise suitable. Nevertheless, I am not persuaded that it adds to the overall quality or is representative of the character of the area or that the mobile home meets the highest standards for residential design, even though the site may have been previously regarded as an eye sore.
27. The boundary wall is a particularly ornate boundary treatment situated along two road frontages. It is overtly domestic in appearance and has resulted in an unacceptable urbanising feature which does not sensitively contribute to the setting and rural qualities of the area. Whilst the appellant contends that the boundary wall results in a marked improvement on the previously dilapidated chain-link fence, it is in my view conspicuous and not a sensitive enhancement owing to its height and ornate design.
28. I conclude that the developments are harmful to the character and appearance of the area in contravention of Policies 33 and 48 of the LP, which seek, amongst other things, to meet the highest standards of design and sensitively contribute to setting and quality. For the same reasons the developments fail to comply with the achieving well-designed places objectives of the Framework.

Other considerations

29. Much of the appellant's case relies on the premise that the residential use enforced against is a replacement for a mobile home the subject of the certificate. However, I have found this to not be the case.
30. It is said that the developments undertaken achieve sustainable social and environmental objectives through replacing a dilapidated structure and rearrangement of the site to enhance impressions of it from the public domain. Whilst based on the photographs of the site that have been provided, prior to the developments before me being undertaken, there may have been some visual improvement, I have nevertheless found the developments before me harmful to the character and appearance of the area. Any perceived

enhancement over that of a scrap yard, even though I recognise that it was previously developed in this regard, are not sufficient to persuade me to grant planning permission for developments that are harmful in themselves. This consideration therefore does not outweigh the harm I have identified.

31. The appellant also contends that a residential presence deters crime, but even that were the case, this in itself does not outweigh the harms I have identified.
32. The site is located within the 5.6km zone of influence of the Chichester and Langstone Harbours SPA, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended). Policy 50 of the LP identifies that net increases in residential development are likely to have a significant effect on the SPA and that appropriate avoidance or mitigation measures for this will comprise a contribution with the joint mitigation strategy of the Solent Disturbance and Mitigation Project.
33. Planning permission should not be granted where there is a risk that a development may have a significant effect on internationally designated sites either individually or in combination with other plans or projects. I appreciate the appellant has gone to the effort of submitting a signed undertaking. However, had I been allowing the appeal, in light of a Court judgement², as the competent authority I would have been required to undertake an Appropriate Assessment. In the event I was allowing the appeal, I note that I have insufficient evidence to enable me to do so. I would have therefore requested further information from the parties, however, as I am dismissing the appeals on other grounds, I need not consider this matter further.

Planning balance

34. The Government is seeking to significantly boost the supply of housing and the development makes a contribution, albeit very modest, to this supply. However, the development amounting to that for a single household would bring only very limited benefits to the economic and social well-being of the wider community.
35. I have found that the mobile home and touring caravan are not in a suitable location and, as well as the boundary wall, are harmful to the character and appearance of the area. Whilst I have some sympathy for the situation the appellant finds himself in, the other considerations raised do not outweigh these harms.

Conclusion

36. For these reasons and having regard to all other relevant matters raised, I conclude that the appeals on ground (a) and against the refusals of planning permission should fail.

Appeal A – The ground (f) appeal

37. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to

² Court of Justice of the European Union (CJEU) 12 April 2018: *People over Wind & Sweetman v Coillte Teoranta*

be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.

38. The appellant contends that the enforcement notice lays no charge against the boundary wall, yet it requires for it to be demolished. However, a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, so that the land is restored to its condition before the change of use took place. In this case, whilst there is no requirement to provide for a replacement boundary treatment, the very ornate walling is domestic in character and forms an enclosure which otherwise contains the unauthorised use. The boundary treatment is therefore part and parcel of the unauthorised use.

39. As there are no other lesser requirements before me, the appeal on ground (f) fails.

Appeal A – The ground (g) appeal

40. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short as there would be difficulties in acquiring an alternative site, securing planning permission, and then physical removal from the site. The site represents the appellant and his family's only home and 1 year is sought in which to comply.

41. However, I have not been persuaded on the limited evidence before me as to why the appellant must seek an alternative site and secure planning permission for this, rather than explore other accommodation alternatives which may already exist. I however have some sympathy for the situation of the appellant and consider that 8 months strikes the appropriate balance to enable the requirements of the notice to be met whilst not allowing the breaches of planning control to unduly subsist.

42. To this extent the appeal on ground (g) succeeds.

Appeals A, B and C - Overall Conclusion

43. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission.

Formal Decisions

Appeal A

44. It is directed that the enforcement notice be corrected and varied by:

- inserting the words '*the material*' between '*Without planning permission,*' and '*change of use*' in section 3.
- substituting 'a' for '*the*' between the words '*stationing of*' and '*mobile home*' in requirement 5. (i).
- substituting '*Eight months*' as the period for compliance.

45. 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

46. The appeal is dismissed.

Appeal C

47. The appeal is dismissed.

Paul T Hocking

INSPECTOR