



Appeal Decisions

Site visit made on 7 July 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal A Ref: APP/L1765/C/19/3235410

Appeal B Ref: APP/L1765/C/19/3235411

Land adjacent to Long Road, Soberton, Hampshire SO32 3PG

- 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 Ms Mandip Sidhu (Appeal A) and Mr Jagrup Singh Sidhu (Appeal B) against an enforcement notice issued by Winchester City Council on behalf of the South Downs National Park Authority.
- The enforcement notice was issued on 12 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of the use of the land from agricultural use to use for the siting of residential caravans and storage of domestic items, the ancillary keeping of domestic animals and the erection of associated shelters, structures and enclosures.
- The requirements of the notice are: 1. Cease the residential use of the land; 2. Cease the use of the land for the siting of caravans, storage of associated domestic items, the ancillary keeping of domestic animals and for any other non-agricultural use; 3. Remove from the land all caravans, domestic items, domestic animals, shelters, structures and enclosures; 4. Restore the land to the condition it was prior to the breach occurring.
- The period for compliance with the requirements is six months.
- Appeals A and B are proceeding on the grounds set out in section 174(2) (b) and (c) 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with correction and variation.

Appeal C Ref: APP/L1765/C/19/3235413

Appeal D Ref: APP/L1765/C/19/3235414

Land adjacent to Long Road, Soberton, Hampshire SO32 3PG

- 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 Ms Mandip Sidhu (Appeal C) and Mrs Surinder Sidhu (Appeal D) against an enforcement notice issued by Winchester City Council on behalf of the South Downs National Park Authority.
- The enforcement notice was issued on 12 July 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of gates, fences and other means of enclosure on the land.
- The requirements of the notice are to remove all gates, fences and other means of enclosure from the land.
- The period for compliance with the requirements is six months.
- Appeals C and D are proceeding on the grounds set out in section 174(2) (b) 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with variation.

Preliminary Matters

1. The enforcement notice the subject of Appeals A and B alleges, amongst other matters, a material change of use to "the siting of residential caravans". By itself, the siting of caravans is not a material change of use; it is the purpose for which the caravans are used which determines whether a material change of use has occurred. Nevertheless, by referring to "residential" in the allegation, together with the requirement to cease the residential use, it is clear that the notice is attacking the stationing and residential use of caravans. Therefore, using the powers under s176 (1) (a) of the 1990 Act I shall correct the wording of the allegation accordingly. I shall also vary the notice requirements by deleting step 2. This step largely duplicates step 1 and by requiring any other non-agricultural use to cease, also ostensibly prohibits as yet unsubstantiated future breaches of planning control, therefore being excessive in terms of remedying the alleged breach specified.
2. Both notices state that the time for compliance begins "with the day on which the notice was served on you". However, an enforcement notice cannot take effect until the date specified therein or, where an appeal has been made, until the date the appeal is decided. As the period for compliance purports to begin before the notice takes effect, it cannot be correct. Moreover, as the date of service is not specified this could lead to uncertainty, particularly if persons having an interest in the land affected were served on different dates. Consequently, I intend to vary both notices to extend the compliance period to six months from their effective date. Having sought the views of both main parties, I am satisfied that there would be no injustice in making the correction and variations described above.
3. The appellants' statement introduced ground (c) appeals for Appeals A and B. Therefore, I have also considered that ground in respect of those appeals. The Council had an opportunity to respond to the matters raised at the final comments stage.
4. It is only after the end of the period for compliance that s179 of the 1990 Act would become relevant. The expediency of taking enforcement action can only be challenged by way of judicial review. Therefore, the above matters are not before me. Also, as there are no deemed planning applications arising from ground (a) appeals, planning merits issues cannot be considered.

Appeals A & B

Ground (b) appeals

5. In order to succeed on this ground, the appellants must show that the matters alleged in the notice have not in fact occurred, the relevant test of the evidence being on the balance of probability.
6. The appeal site forms part of a substantial agricultural field, occupying an open countryside setting. The field consists of approximately 122 smaller plots in

various ownerships. The site is composed of 13 such plots, located towards the rear of the field. During my visit, I observed that although mostly open and laid to grass, a touring caravan had been stationed on part of the site and was in use for residential purposes. There were some covered structures nearby including a stable block and a shed, together with a container. Metal 'Heras' type fencing had been erected in the vicinity to form enclosures and animals including horses, goats and chickens were present. Post and wire fencing had been erected, physically dividing the site from the rest of the field.

7. The appellants provided no firm evidence to show that the caravan had been used solely for storage or as rest facilities in conjunction with an agricultural use of the site. Therefore, there was little evidence to suggest that the caravan has been used other than for residential purposes. The Council's evidence showed that a caravan together with covered structures and enclosures were in situ and horses were present on the site prior to the notice being issued. Whilst keeping goats and chickens and the grazing (but not keeping) of horses can fall within the definition of agriculture set out in s336 (1) of the 1990 Act, there was little to indicate that such animals had been kept on the site other than for the domestic needs or personal enjoyment of the residential occupiers of the caravan. Accordingly, based on the evidence available I find it more likely than not that the use alleged by the notice has occurred.
8. The appellants only own a small portion of the site, comprising one of the plots. The caravan and other structures are not located on the appellants' plot. However, during my visit, I observed that there was little to prevent access to their plot from the rest of the site. It was apparent that horses had recently been roaming on the appellants' plot in conjunction with activity taking place on the rest of the site. The Council's evidence showed that prior to the notice being issued, their plot had been accessible from the rest of the site, with horses roaming on it or nearby. Accordingly, the available evidence indicates that the site comprises a single planning unit in residential use. Whilst I appreciate that the appellants' plot may have been put to residential use without their knowledge, that does not change the factual basis of what has occurred.
9. Therefore, on the balance of probability the appellants have been unable to show that the matters alleged have not occurred and the ground (b) appeals fail.

Ground (c) appeals

10. To succeed on this ground, the appellants must show that the matters alleged in the notice do not constitute a breach of planning control, the balance of probability again being the relevant evidential test.
11. As far as I have been made aware, the only lawful use of the site is for agriculture. The stationing and residential use of caravans has therefore resulted in a material change in the use of the site. Such a change of use has involved "development" as defined in s55 (1) of the 1990 Act, for which planning permission is required by virtue of s57 (1) of that Act. My attention was not drawn to any grant of express planning permission authorising the material change of use.

12. Accordingly, on the balance of probability the appellants have been unable to show that the matters alleged do not constitute a breach of planning control and the ground (c) appeals fail.

Conclusion

13. For the reasons given above I consider that these appeals should not succeed. I shall uphold the enforcement notice with correction and variation.

Appeals C & D

Ground (b) appeals

14. What the appellants are required to show and the evidential standard applicable is set out in paragraph 5 above.
15. The appeal site is located adjacent to Long Road and is composed of 29 of the plots which make up the field. Lines of timber posts around one metre high have been driven into the surface of the site at similarly-spaced intervals. Lengths of barbed wire have been strung between the posts. Occasionally, to provide access to parts of the site, lengths of removeable mesh fencing have been strung between the posts. The fencing encloses the site along its south-west and north-west boundaries as well as enclosing some of the individual plots. The wire has subsequently been cut along a substantial part of the south-west boundary, but the fence posts are still in situ with the wire wrapped around. As a result, the erection of gates, fences and other means of enclosure is not an inaccurate description of the works undertaken.
16. As the appellants only own 2 of the affected plots, theirs is a small portion of the site. I understand that the works were undertaken without the appellants' knowledge. However, the above matters do not alter the factual basis of what has occurred.
17. Therefore, on the balance of probability the matters alleged have in fact occurred and the ground (b) appeals fail.

Conclusion

18. For the reasons given above I consider that the appeals should not succeed. I shall uphold the enforcement notice with variation.

Formal Decisions

19. Appeals A and B-it is directed that the enforcement notice be corrected by:

- Deletion of the words "the siting of residential caravans" in paragraph 3 ("the breach of planning control alleged...") and their substitution by the words "the stationing and residential use of caravans".

and varied by:

- Deletion of step 2 at paragraph 5 ("what you are required to do") in its entirety.
- Renumbering steps 3 and 4 to steps 2 and 3 respectively.

- Deletion at paragraph 6 ("time for compliance") of "6 months beginning with the day on which the notice was served on you" and its substitution by "6 months after the date the notice takes effect".

Subject to the above correction and variations the appeals are dismissed and the enforcement notice is upheld.

20. Appeals C and D-it is directed that the enforcement notice be varied by deletion at paragraph 6 of "6 months beginning with the day on which the notice was served on you" and its substitution by "6 months after the date the notice takes effect". Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR