



Appeal Decisions

Site visit made on 30 June 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2020

Appeals A and B: APP/A0665/C/19/3222491 and 3222492

Land at Fields Farm, Higher Wych Road, Wigland, Malpas, Cheshire SY14 7JW

- 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 William Darlington (Appeal A) and Mr Richard Thomas Darlington (Appeal B) against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice, numbered 17/00939/EOPDEV, was issued on 18 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the stationing of a caravan for human habitation ["the Unauthorised Development"].
- The requirements of the notice are (i) Fully remove all of the mobile home, remove all resulting materials away from the land and restore the land to a grassed field.
- The period for compliance with the requirements is 6 calendar months.
- Appeal A is proceeding on the grounds set out in sections 174(2)(b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended, and Appeal B is proceeding on the grounds set out in sections 174(2)(b), (c), (e), (f) and (g) of the Act as amended.

Summary of Decisions: The appeals are allowed, and the enforcement notice is quashed as set out in the Formal Decision below.

Appeals C and D: APP/A0665/C/19/3222495 and 3222494

Land at Fields Farm, Higher Wych Road, Wigland, Malpas, Cheshire SY14 7JW

- 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 William Darlington (Appeal C) and Mr Richard Thomas Darlington (Appeal D) against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice, numbered 17/00939/EOPDEV, was issued on 18 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of agricultural land to a mixed use of agriculture and the stationing of a caravan for human habitation ["the Unauthorised Development"].
- The requirements of the notice are (i) Cease the residential use of the Land, fully remove all of the mobile home, remove all resulting materials away from the Land and restore the Land to a grassed field.
- The period for compliance with the requirements is six calendar months.
- Appeal C is proceeding on the grounds set out in sections 174(2)(a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended, and Appeal D is proceeding on the grounds set out in sections 174(2)(b), (c), (e), (f) and (g) of the Act as amended.

Summary of Decisions: The appeals are dismissed following correction and

variation of the enforcement notice in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr William Darlington and Mr Richard Thomas Darlington against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Procedural matters

2. I consider that these appeals can be determined by way of written representations as I will be able to reach a decision based upon the information already available. Both the appellants and the Council have agreed to the appeals proceeding on this basis.
3. In addition to the appeals on grounds (a), (b), (c), (e), (f) and (g) the appellants consider that the notices should be quashed because they are not clear on their face as to what unauthorised development it refers to. An enforcement notice must state "the matters which appear to the local planning authority to constitute the breach of planning control" (s173(1)(a))¹. A notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are (s173(2)). The test applied in deciding whether a notice satisfies the statutory requirement is 'does the notice fairly tell the recipient what he has done wrong and what he must do to remedy it'. Furthermore, the recipient must be able to find out from within the four corners of the document what he is required to do².
4. From the descriptions "siting of a mobile home" and "use as a residential dwelling" coupled with the requirements "remove all of the mobile home" and "cease the residential use of the Land, fully remove all of the mobile home" it is reasonable to conclude that a place of residence has been created. The appellants do not dispute this as a matter of fact. The Council has served notices in the alternative for alleged operational development and alleged material change of use of the land pertaining to the residence. While the issue of material change of use or operational development needs to be clarified, I am satisfied that the notices fairly tell the persons upon whom they have been served what has been done wrong and what must be done to remedy it.
5. The appellants have raised issue with the two notices only being accompanied by one explanatory letter, one set of explanatory notes and one plan. S173(10) may require every copy of an enforcement notice to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174 and ENAR 4(c) requires the precise boundaries of the land to which the notice relates to be specified, whether by reference to a plan or otherwise. While the Council's covering letter does not expressly make it clear why two notices are being served, the fact that both notices accompanied the same letter and the same explanatory notes document, leaves no doubt that the covering letter and explanatory notes are applicable to both notices. Each notice provides a written description of the Land to which they relate, complying with the requirements of ENAR 4(c). The plan, again, leaves little doubt as to the land detailed in paragraph 2 of each

¹ All references in brackets are to the Town and Country Planning Act 1990, as amended.

² *Miller-Mead v MHLG* [1963] 2 QB at 224; 1 All ER 459

notice. I am satisfied that no injustice has arisen as a result of the Council's approach.

6. I am also satisfied that the land to which this notice relates is clearly identified in Paragraph 2 of the notice and the area within which the caravan is stationed falls within the land edged red on the plan. The appellants have provided a plan showing a reduced red line area and this is discussed in greater detail below.
7. The covering letter issued with the notices stated an incorrect fee amount to be paid in connection with the ground (a) appeal. It is clear from the correspondence received from the appellant that this error was identified in time so as not to prejudice the ground (a) appeal.

The Notices

8. The Council has issued two notices, one alleging operational development (notice A) and one alleging a material change of use of the land (notice B). Two notices were issued as the Council was unsure as to whether the development that had occurred was the siting of a mobile home or whether the mobile home had secured a degree of permanence to amount to operational development in the form of a residential dwelling.
9. The development has the appearance of a twin unit caravan. Information provided by the appellants, and uncontested by the Council, in respect of the development's dimensions and means of construction confirm it falls within the definition of a twin unit caravan³. Photographs within the appellant's statement of case (SOC) show the gable joint covers and I saw part of the wheeled chassis during my site visit. A timber pelmet has been provided around the caravan. I also saw that the caravan is connected by pipework to a foul water drainage facility. From the evidence before me, I am satisfied that the development could readily be removed from the site in two sections. I find that the development has not accrued a degree of permanence that is sufficient to constitute a building and it remains within the definition of a twin unit caravan and therefore a use of land.
10. Neither notice accurately describes the development that has occurred. I find that notice A should be corrected by the deletion of the words "the siting of a mobile home ["the Unauthorised Development]" and substitution of "the stationing of a caravan for human habitation ["the Unauthorised Development]" and notice B should be corrected by the deletion of the words "change of use of the Land from agricultural use to use as a residential dwelling ["the Unauthorised Development]" and substitution of the words "material change of use of agricultural land to a mixed use of agriculture and the stationing of a caravan for human habitation ["the Unauthorised Development"]". I am satisfied that no injustice would be caused to the appellant or Council by these corrections.

Appeals A – D - Ground (e)

11. The subject of the enforcement notice comprises a caravan sited on agricultural land for the purposes of human habitation. The enforcement notice was served on Mr Richard Thomas Darlington as landowner and Mr William Darlington as occupier of the caravan.

³ Caravan Sites Act 1968

12. The appellants say in their SOC that the Council has failed to serve the enforcement notice on all the occupiers of the caravan, which is said to include Ms Stella Ann Duffy. The Council accepts that it did not serve a copy of the enforcement notice on Ms Stella Ann Duffy. However, it points out that a telephone conversation had taken place with her, regarding the breach of planning control, prior to the service of the notice. Ms Duffy was also present at my site visit.
13. S176(5) provides that, where it would be otherwise a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him. It is clear from the evidence before me that Ms Stella Ann Duffy knew about the enforcement notice. I am satisfied that neither Mr William Darlington, Mr Richard Thomas Darlington nor Ms Stella Ann Duffy have been substantially prejudiced by the Council's failure to serve the enforcement notice on all affected parties.
14. The appeals on ground (e) therefore fail.

Appeals A and B - Ground (b)

15. To succeed on this ground the appellants must prove on the balance of probability that the operational development identified in the notice has not in fact occurred.
16. The notice alleges that operational development has occurred in the form of the stationing of a caravan for human habitation. The development that has occurred is a material change of use of land and not operational development. The development, as alleged, has not occurred as a matter of fact.
17. For this reason, I conclude that the appeals should succeed on ground (b) and enforcement notice A should be quashed.
18. In these circumstances, the appeals on grounds (c), (f) and (g) do not fall to be considered in Appeals A and B only.

Appeals C and D - Ground (b)

19. To succeed on this ground the appellants must show on the balance of probability that the material change of use identified in the corrected notice has not in fact occurred.
20. The notice, as corrected, alleges that a material change of use of agricultural land to a mixed use of agriculture and the stationing of a caravan for human habitation has occurred. The evidence submitted by the appellants confirms that Mr William Darlington and Ms Stella Ann Duffy reside in the caravan as their sole place of residence. No evidence to suggest that the caravan is not being occupied for human habitation has been provided.
21. The appellants also claim that the area of land outlined in red on the plan accompanying the notice is excessive as it encompasses land beyond which the caravan is stationed. As set out above, Regulation 4(c) requires that the precise boundaries of the land to which the notice relates are specified by reference to a plan or otherwise. The corrected allegation confirms the mixed

use of the land and I find the notice plan to be accurate and there is no need for the red lined area to be amended.

22. For the reasons given, I find that the alleged development has occurred as a matter of fact and the appeals on ground (b) fails.

Ground (c)

23. The appeals on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant.
24. The appellant's evidence does not dispute that a caravan for human habitation has been stationed on the site.
25. The corrected notice relates to a material change of use of the land to a mixed use. The land was previously used for agriculture. The stationing of a caravan for human habitation has introduced an additional use to the land, which was previously open and devoid of structures. The introduction of the residential use, in conjunction with its associated paraphernalia, such as garden furniture and shed, has materially changed the character of the land's use. A change of use to a mixed use of agriculture and stationing of a caravan for human habitation significantly changes the character of the land's use. The mixed-use is also likely to have off-site consequences given the nature of the residential use. The change falls within the scope of s55(1) of the Act.
26. I conclude that the alleged development does constitute a breach of planning control and the appeals on ground (c) should fail. The enforcement notice is upheld.

Appeal C - Ground (a) and the deemed planning application

27. The appellant is seeking planning permission for the stationing of a caravan for human habitation by a person engaged in agriculture, forestry or other rural enterprise, or a relative or partner of such a person living with them, for a temporary period of three years. It is suggested that during this period financial viability and functional need would continue to be proven. Also, that it is the appellants intention to pursue a prior notification application⁴ to convert an agricultural building at Field Farm into a dwelling. If that application is successful, the conversion works would have to be completed within 3 years. This could coincide with the expiry of the temporary permission for the stationing of the caravan.
28. At the time the notice was issued, the development plan consisted of the Cheshire West and Chester Local Plan (Part One) January 2015 (CWCLP1) and the saved policies within the Chester District Local Plan May 2006 (CDLP). Since the notice was issued the CDLP has been superseded by the Cheshire West and Chester Local Plan (Part Two) July 2019 (CWCLP2). Policy H07 of the CDLP has been replaced by policies DM19 and R1 of the CWCLP2.
29. The site is located outside of any identified settlement boundary, in the countryside. Local and national planning policies seek to avoid the development of isolated homes in the countryside unless one or more of the circumstances set out in policy DM18 of the CWCLP2 or paragraph 79 of the

⁴ Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

National Planning Policy Framework (the Framework) are met. The provision of an essential rural worker's dwelling would be one such circumstance.

30. I consider the **main issue** to be whether there is an essential need for a dwelling to accommodate a rural worker on the land.

Reasons

31. The farm enterprise encompasses 20 acres of land used for the grazing of livestock and horses. The appellants advise that they breed and buy in sheep for fattening up before selling them. The appellants also keep and breed 5 Shire horses and 10 miniature horses, with foals being sold. The number of sheep and horses will vary over time. In order to comply with the Animal Welfare Act 2006, the appellants argue that they need to live on site in order to respond to welfare requirements and emergencies that could occur.
32. No evidence has been provided to demonstrate the number of working man hours generated by the keeping of sheep and horses on this agricultural holding. The appellants' case also confirms that Mr William Darlington works as an agricultural contractor on other farms. No information relating to his contracted hours is provided. On the basis that Mr William Darlington has time available to work outside of this agricultural holding it leads me to conclude that there is not a justified need for a rural worker to live full time on this site as their place of work.
33. In addition, the Council confirm that the keeping and breeding of horses does not benefit from planning permission. The appellants affirm that the planning status of the keeping and breeding of horses is not a matter for this appeal. However, for it to be taken into consideration in my assessment of need, it is pertinent. Based on the figures provided, the horses represent approximately a quarter, or a third if foals are included, of the total number of animals on the agricultural holding. From the information provided, the keeping and breeding of horses appears to be more labour intensive than the keeping and breeding of sheep. For these reasons, I find that the keeping and breeding of horses is more than incidental to the agricultural activity taking place and would represent a material change in use of the holding. As the keeping and breeding of horses does not benefit from planning permission it cannot attract any weight in my determination of this appeal.
34. The appellant has also identified that there is a need to live near the farmhouse to provide support for his's mother, who is in ill health and has poor eyesight. Given that the appellants' evidence states that time is spent working away from the farm holding, I can give little weight to this need.
35. While COVID-19 and Mr William Darlington's own health issues will have had an impact upon the operational viability of the farm enterprise, I find this would further detract from the need for a worker to live on the site.
36. The proposed conversion of an adjacent agricultural building to a dwelling under the prior notification route is an alternative option that could be pursued. At this time however, such an application has not been made and the appellants indicate that it has been delayed due to COVID-19. As there is no guarantee that such an application would be lodged and then found acceptable by the Council, I can give this no weight.

37. Insufficient evidence has been provided to demonstrate that it is necessary for a rural worker to live at their place of work in this instance for the enterprise to function properly. Similarly, no other justification for the dwelling, even on a temporary basis, has been provided that would outweigh the policy conflict.

Conclusion on ground (a)

38. The dwelling is located in the countryside and insufficient evidence has been provided to demonstrate that there is an essential need for a dwelling to accommodate a rural worker. No other justification has been demonstrated for a dwelling in this location. For these reasons, I find the development to be contrary to policies STRAT1 and STRAT9 of the CWCLP1 and policies R1 and DM18 of the CWCLP2, which, amongst other things, seek to protect the countryside from encroachment and locate new rural housing where it would enhance or maintain the vitality of local communities.
39. The appeal on ground (a) fails and the notice is upheld.

Appeals C and D - Ground (f)

40. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control. Only the removal of the caravan and the restoration of the site to its condition prior to the breach can achieve that purpose.
41. The appellants argue that having to “restore the Land to a grassed field” is excessive as this goes beyond what the condition of the land was before the breach occurred. The caravan is stationed on a concrete hardstanding, which the appellant says was the internal floor of an agricultural building that has been demolished. Historic Ordnance Survey data showing the presence of the building has been provided. I also saw a brick and mortar ‘edging’ to the area of concrete hardstanding, which suggests that a wall of some description surrounded it at some point in time. The area of hardstanding is closely related to the existing agricultural buildings and forms an integral part of the hard-surfaced farmyard. On this basis I conclude that the hardstanding was not formed to facilitate the stationing of the caravan and the land could not have been a grassed field. The requirements of the notice can only require the land to be returned to its condition before the breach occurred and the notice should be varied accordingly.
42. The appellants raise the question of whether the requirements of the notice also encompass a number of ancillary structures placed on the land in connection with the use of the caravan. These include, but are not necessarily limited to, a small shed and tables and chairs outside the caravan. The notice requires the cessation of the residential use of the land, the removal of the mobile home and all resulting materials, and restoration of the land to its condition before the breach occurred. Given that the small shed, table, chairs and any other ancillary structures were placed on the land incidental to the residential use of the caravan, they would need to be removed as part of restoring the land to its original condition before the breach occurred.
43. I find that the restoration of the land to a grassed field exceeds what is necessary to remedy the breach. The requirement should be varied so as to restore the land to its original condition before the breach occurred. No

injustice would result from the variation of this requirement on the notice. For this reason, I allow the ground (f) appeal, in so far as the notice is varied.

Ground (g)

44. A period of 6 months to secure the removal of the caravan is claimed to be too short to allow the residents to find somewhere else to live and to make alternative arrangements for animal welfare. A period of 12 months is requested, and it is indicated that the Council may still have to exercise their powers under S173A(10)(b) to extend that time.
45. A period of 6 months would provide the appellants with adequate time to pursue a prior notification application for the conversion of the adjacent agricultural building or to find alternative accommodation. Malpas is a settlement of some size, where alternative accommodation could be found. It is also only a short travel time and distance from the site. I therefore conclude that 6 months is an adequate period to comply with the notice.
46. The appeal on ground (g) fails and the notice is upheld.

Overall conclusions

47. I acknowledge that, under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding the enforcement notice will engage that right, as residents of the caravan are at risk of losing their home. However, this fact has been weighed against the wider public interest of protecting the environment from unacceptable forms of development. The objections to the development are serious and cannot be overcome by conditions on any planning permission which I could lawfully grant pursuant to ground (a). On balance I conclude that dismissal of the appeal would not have a disproportionate effect on the residents of the caravan.

Formal Decisions

Appeals A and B

48. It is directed that the enforcement notice is corrected by the deletion of the words "the siting of a mobile home" and the substitution of the words "the stationing of a caravan for human habitation" in paragraph 3.
49. Subject to the correction, the appeals are allowed, and enforcement notice A is quashed.

Appeals C and D

50. It is directed that the enforcement notice is corrected and varied by:
 - 1) The deletion of the words "change of use of the Land from agricultural use to use as a residential dwelling" and the substitution of the words by the following text: "the material change of use of Land from agricultural use to a mixed use for agriculture and the stationing of a caravan for human habitation" in paragraph 3.
 - 2) The deletion of the words "restore the Land to a grassed field" and the substitution by the following words "restore the Land to its condition before the breach occurred" in paragraph 5(i).

51. Subject to the correction and variation, the appeals are dismissed, and enforcement notice B is upheld.

M Madge

INSPECTOR