



Appeal Decision

Site visit made on 5 August 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Appeal Ref: APP/X1735/C/20/3248719

Land at The Bus, Avenue Road, Hayling Island PO11 0LX

- 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 Reuben Barney of Mayfair Hayling Limited against an enforcement notice issued by Havant Borough Council.
 - The enforcement notice was issued on 11 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, a material change of use of land for the storage of caravans.
 - The requirements of the notice are: 1) Cease the use of the Land for the storage of caravans 2) Remove the caravans from the Land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

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

Application for Costs

2. An application for costs was made by Havant Borough Council against Mr Reuben Barney of Mayfair Hayling Limited. This application is the subject of a separate Decision.

The ground (b) appeal

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the storage of caravans, had not occurred as a matter of fact at the time the enforcement notice was issued.
4. The appellant states that in September 2019 caravans had been removed from the land to allow for tree clearance works and in order to vacate the site for his impending purchase, which then took place in October 2019. It is said that it was not until May 2020, and therefore after the notice was issued, that new caravans were brought onto the land.
5. However, photographs provided by the Council demonstrate that one or more static caravans were stationed on the land on both 13 December 2019 and 19

February 2020, either side of the issue of the enforcement notice on 11 February 2020. These photographs therefore contradict the appellants version of events.

6. The appellant has therefore not demonstrated on the balance on probabilities that the alleged breach of planning control had not occurred as a matter of fact at the time the notice was issued.
7. The appeal on ground (b) consequently fails.

The ground (d) appeal

8. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice owing to the passage of time.
9. It is therefore necessary for the appellant to demonstrate on the balance of probabilities that the storage of caravans has subsisted for a continuous period of 10 years prior to the issue of the notice on 11 February 2020 (a relevant period).
10. The appellant has provided aerial photography of the site which he considers confirms the presence of caravans on the land from 1999-2020. The photographs provided would appear to demonstrate on the balance of probabilities that two static caravans have been stationed on the land, although all that can be clearly deciphered are two white oblong shapes. However, photos provided by the Council demonstrate on the balance of probabilities that these were likely to have been static caravans.
11. The appellant provides no first-hand evidence about the use of the caravans or site. The Council has provided evidence that the land was used in the 1960's and 1970's for residential purposes by virtue of a series of temporary planning permissions and thereafter for recreational or leisure purposes, although no planning permission or certificate of lawfulness exists in regard of the latter use/s. The Council also highlight a letter a local MP sent to its Chief Executive in 2018 on behalf of the former owner of the site, where it is said that the land was used to park three caravans for recreational use. It is also said by the Council that in more recent years the condition of the land and caravans had deteriorated.
12. The presence of static caravans in the aerial photographs does not demonstrate on the balance of probabilities the use to which they were put, and whether that would have been lawful for a relevant period. In any event, if the previous use was indeed a recreational or leisure use, the storage of caravans would then amount to a material change from that use.
13. The lack of evidence from the appellant about the actual use therefore casts considerable doubt in my mind that there has been the storage use of caravans subsisting on the land for a relevant period. Moreover, there are then further issues concerning potential abandonment and/or the continuity of any aforementioned use, given also the clearance of the site that took place in 2019.
14. The burden of proof has therefore not been discharged by the appellant to demonstrate on the balance of probabilities that the storage of caravans on the

land has subsisted for a continuous period of 10 years prior to the issue of the notice.

15. The appeal on ground (d) consequently fails.

The ground (g) appeal

16. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and requests 6 months in order to find alternative premises in which to relocate the caravans.

17. I accept that 1 month is unlikely to be adequate, but I have little evidence to demonstrate why a period of 6 months would be necessary. I consider that a period of 3 months strikes an appropriate balance and would not unnecessarily perpetuate the breach of planning control.

18. The appeal on ground (g) therefore succeeds to this limited extent.

Overall Conclusion

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

20. It is directed that the enforcement notice be varied by:

- substituting '3 months' as the time for compliance.

21. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR