



Appeal Decision

Site visit made on 20 October 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/B1550/C/19/3239316

Land at Horseshoe Stables, Blountswood Road, Hullbridge

- 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 Miss Claire Newbery against an enforcement notice issued by Rochford District Council.
 - The enforcement notice, numbered 16/00235/COU_C, was issued on 16 September 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from a private equestrian use to a mixed use of private equestrian use and the siting of a mobile home (marked 'A' on the attached plan 2)¹ used for human habitation.
 - The requirements of the notice are:
 1. Cease the use of land for the siting of a mobile home for human habitation.
 2. Remove the mobile home shown in the position Marked 'A' from the site.
 3. Remove any domestic paraphernalia on the site in connection with the use of the land for siting a mobile home for the purposes of human habitation.
 4. Remove any pipes, cables or sewage systems used for the use of the land for siting a mobile home for the purposes of human habitation.
 5. Return the land to the condition it was before the development described in this notice took place.
 - The periods for compliance with the requirements are:

Step 1: 9 months
Steps 2 and 3: 10 months
Steps 4 and 5: 11 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - deleting 'Section 171(1)(a)' from Paragraph 1 and replacing it with 'Section 171A(1)(a)';
 - Inserting the words 'in the approximate position' in front of the words 'marked 'A' on the attached plan 2' in Paragraph 3 (The Matters Which Appear To Constitute The Breach Of Planning Control);
 - Inserting the word 'approximate' in front of the word 'position' in Requirement 2 at Paragraph 5 (What You Are Required To Do);and varied by:
 - Adding the following sentence to Requirement 4 at Paragraph 5 (What You Are Required To Do): 'Nothing in this requirement shall be

¹ Plan 2 is attached to the enforcement notice

- taken to mean that the electricity supply to the site is to be removed.'
 - Deleting all wording at Paragraph 6 (Time For Compliance) and replacing it with the following:
'12 months after the notice takes effect.'
2. Subject to these changes, 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.

Procedural Matters

3. The notice refers to section 171(1)(a) of the Act. This should be section 171A(1)(a). I am able to correct this error without fear of causing injustice and shall do so.
4. The appellant says that the position of the unit is not correctly shown on the plan attached to the enforcement notice, and has provided a plan which is said to show the correct position. I cannot be sure which of the plans is the more accurate, but the differences are quite limited, with a degree of overlap of the area defined. There is no claim that any injustice has arisen and the possibility of the plan attached to the notice being inaccurate can be addressed by making it clear that the plan shows only the approximate position of the mobile home. I shall amend the notice accordingly.

The appeal on ground (d)

Background

5. An appeal on ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The time periods for taking enforcement action are set out in section 171B of the Act. In accordance with section 171B(3), the relevant period in this case is, *'the end of the period of ten years beginning with the date of the breach'*. Thus, the question to be determined is whether, on the balance of probability, the use alleged in the notice had continued for the 10 year period leading up to the day when the notice was issued. This approach is consistent with the court and appeal decisions the appellant has provided.
6. Horseshoe Stables comprises a strip of land containing paddocks, stables and other buildings, together with the mobile home at issue. I understand that the appellant's family have owned the land since the 1990s and have kept horses there for many years. A static caravan (which I shall call 'Unit 1') was placed on the site in 1999 but was used for storage rather than as accommodation. I understand, however, that a toilet and running water were available within the caravan. This is explained in the statutory declaration of Mrs Sandra Newbery.
7. The appellant states that a second static caravan ('Unit 2') was brought onto the site in July 2009 and occupied as a dwelling until September 2018. The appellant states that the 2 caravans (the storage caravan and the residential caravan) were then both replaced by the double-unit mobile home ('Unit 3') that is now present on the site. It is said that Unit 3 has been occupied since then and that, consequently, a caravan/mobile home used for human habitation has been sited on the land for over 10 years and has been occupied by the appellant since July 2009. It is on this basis that it is said to have been

too late to take enforcement action when the Council issued the notice in September 2019, being more than 10 years after July 2009.

Assessment

8. The burden of proof in a ground (d) appeal falls on the appellant. To show that enforcement action could not be taken on the date that the notice was issued, the appellant must establish, on the balance of probability, that the use alleged continued for the 10 year period leading up to the day the notice was issued.
9. There is agreement that Unit 3 has been at the site since September 2018 and has been occupied since then. The dispute centres on Unit 2, and whether:
 - a) It was brought to the site in July 2009, as the appellant claims; and
 - b) It was subsequently continuously occupied as a dwelling.
10. The appellant's contention that Unit 2 was brought onto the site in July 2009 is set out in her statutory declaration. A statutory declaration from her mother, Mrs Sandra Newbery, supports the claim. Additionally, the appellant has provided a range of statements from individuals who know her in support of her case. All the statements are consistent with the appellant's version of events and some refer specifically to July 2009 as the date when her occupation of the site commenced. One statement (at Appendix A to the appellant's appeal statement) includes a photograph in which a mobile home can be seen on the site, and this shows a date of 12 September 2009. A letter from a pest control company states that the company visited the site in August 2009 regarding vermin control 'in and around a mobile home [the appellant] had recently moved into'.
11. However, other evidence suggests that the appellant took up residence at the site at a later date. In an email to the Council on 19 October 2018, the appellant advised that, 'We arranged to back pay the council tax for the period of residence, of which there is no debt outstanding and I continue to pay council tax'. It is a matter of agreement that the tax has, in fact, only been paid back to 2011, suggesting that the site was not occupied prior to this. The appellant says that this was due to a miscalculation. Nevertheless, it casts a degree of doubt on the claim that the appellant has resided at the site since July 2009.
12. The email confuses the matter further by stating, 'The mobile home we first lived in has been on the property for around 17/18 years. This has since been updated but to the same footprint'. If correct, this would mean that Unit 2 was brought to the site far earlier than July 2009. It does not appear to be a reference to Unit 1, which is said to have been used as a store and not lived in.
13. The appellant has provided a Google Earth image, said to be from 1 January 2009. It is said that this shows the land being prepared for the arrival of Unit 2 later that year. However, I cannot discern anything relating to ground preparation works from the image that has been provided. Furthermore, the Council states that the image was actually taken on 27 September 2009. This is supported by a letter from Getmapping PLC, a company which distributes aerial images. Judging by the markings on one of the screenshots provided by the appellant, Getmapping PLC appear to have copyright of the image.

14. The appellant disputes the Council's claim, providing a screenshot from Google Earth showing the date of 1 January 2009. However, it is clear that the image cannot have been captured during January, since the trees are in leaf. Thus, it appears to me that the Council's explanation, that Google Earth uses the first or last day of the year when they are unaware of the actual capture date of the image, is likely to be correct. The date of 27 September 2009, on the other hand, is consistent with the foliage shown on the photograph. Accordingly, on the balance of probability, it appears to me that this is the actual date of the photograph. Since the only caravan shown on the photograph is the storage caravan (Unit 1), this indicates that there was no residential caravan at the site on 27 September 2009.
15. Placing a date of 27 September 2009 on the aerial photograph is not consistent with the date of 12 September 2009 claimed for the photograph at the appellant's Appendix A, which shows the mobile home in place. However, I am persuaded by the Council's evidence on this matter, for the reasons I have given, and conclude that the date on the photograph attached to the witness statement at Appendix A is wrong.
16. Overall, the appellant's evidence on the date Unit 2 was brought to the site is inconsistent and does not demonstrate, on the balance of probability, that it was in July 2009. It appears probable to me that Unit 2 was brought to the site after the date of the aerial photograph, that is, after 27 September 2009. This is marginally less than 10 years before 16 September 2019, when the enforcement notice was issued.
17. As to the way the units have been used, it appears probable to me that Unit 3 has been occupied since it was brought to the site. It is a substantial twin-unit home and the appellant has plainly gone to some trouble to ensure that it has all the necessary services for occupation.
18. Unit 2, on the other hand, was smaller and did not have mains electricity, the appellant relying on solar lighting and a generator. Thus, it was less than ideal for use as permanent accommodation all year round. This does not, on its own, show that it was not continuously occupied but suggests that there might have been good reason not to remain in it throughout the winter, as the Council suggests was the case.
19. The appellant has provided a range of correspondence in which the appeal site is given as her address, but this only dates from 2015. The appellant advises that the appeal property was only registered for post in 2015, her post being sent to her parents' address before then. The reason for this is not clear but, whatever the reason, the appellant has not been able to demonstrate with correspondence that she resided at the property throughout the relevant period.
20. The appellant has provided statutory declarations from herself and her mother which both state that the appellant has occupied the site continuously since July 2009. However, I have already concluded that the July 2009 date is wrong and this reduces the weight I attach to these declarations. The various witness statements refer to the appellant occupying the site, with varying degrees of certainty and specificity. While they give a clear indication that the appellant spent time living at the site, the information provided is insufficient to demonstrate continuous occupation of the property throughout the relevant period.

21. Taken as a whole, the appellant's evidence does not demonstrate that Unit 2 was continuously occupied throughout its time at the site.

Conclusion - Ground (d)

22. For the reasons set out above I conclude that it has not been demonstrated, on the balance of probability, that a mobile home used for human habitation has been present on the site and continuously occupied for 10 years before the enforcement notice was issued. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a)

Main issues

23. The site falls within the Metropolitan Green Belt. With that in mind, the main issues are:
- Whether the development is inappropriate within the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the development on the character and appearance of the area; and
 - If the development is inappropriate, whether the harm arising from this, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the development is inappropriate within the Green Belt

24. The Council has referred to policies GB1 and GB2 of its Core Strategy. However, these predate the policies of the Framework and do not assist in determining whether development is inappropriate within the Green Belt. Accordingly, I have relied on the Framework to make that determination.
25. The Framework establishes which forms of development are inappropriate within the Green Belt and the material change of use of land is addressed at Paragraph 146. This establishes at 146 e) that 'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)' is not inappropriate if it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Although various more general Green Belt matters are raised by both parties, these do not affect the determination relating to inappropriateness.
26. In this case the change of use has resulted in the siting of a mobile home on the land. The mobile home now on the site is a large, twin unit home and an area around it has been enclosed with fencing. These changes have harmed the openness of the site and the Green Belt. I understand that the current mobile home is broadly located in the space vacated by the two previous static caravans (units 1 and 2), one of which was used for storage. However, Unit 2 was unauthorised and I regard the storage unit (Unit 1) as a separate matter. The deemed planning application arising from the Ground (a) appeal proposes the introduction of a residential use to a site which otherwise would not have such a use and this results in a mobile home, together with associated development such as a fenced-off garden, being present on the site. Thus, the openness of the site and the Green Belt has been harmed.

27. I appreciate that the mobile home has been sited close to the densely planted western site boundary and close to existing buildings. Nevertheless, it is a significant, plainly residential, addition to the site and openness has been eroded as a result. The fact that the equestrian use remains at the site does not alter my view of this.
28. Because of the loss of openness, the material change of use of the land does not fall within the provisions of Paragraph 146 and is inappropriate development in the Green Belt. The Framework advises at Paragraph 143 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance

29. The general area in which the appeal site lies contains a variety of businesses and buildings, including some dwellings, on nearby sites. Overall, however, the area is distinctly rural in character. The site is located within the Special Landscape Area of the Crouch and Roach Farmland. The Council advises that this designated area is largely undeveloped and is characterised by strong right-angled patterns of single-track lanes, regular fields of variable sizes and intermittent hedgerows. However, I have not been provided with any specific policy relating to the Special Landscape Area.
30. The mobile home that is now on the site is a twin-unit item with a pitched roof. Wooden boarding has been installed around the base and wooden steps installed to the doors. An area around it has been enclosed and loose-surfaced to provide a garden. Some factors reduce the visual impact of the unit. The appeal site contains stables, various outbuildings and hardstandings, and the mobile home is seen in this context. It is also well-screened by trees and vegetation. The appellant also argues that the mobile home is a high-quality unit, with a utilitarian design which is in keeping with the rest of the site.
31. Nevertheless, the residential purpose of the mobile home is very obvious from its appearance and the rural character of the site is eroded as a result. I accept that the screening and other buildings on the site serve to reduce the visual harm arising from the unit. Additional landscaping could also be required by a planning condition. Nevertheless, I conclude that there is harm to the character and appearance of the area. Consequently, there is conflict with Paragraph 127 of the Framework, which seeks to ensure that developments add to the overall quality of the area and also states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. The Council has also referred me to Core Strategy Policy CP1 and Policy DM1 of its Development Management Plan, which deal with design. However, I have approached this issue on the basis of the visual effect of the change of use before me, rather than the design of the unit currently on the site, and do not regard the policies as relevant.

Other considerations

32. I have considered the matters raised by the appellant in support of the development.
33. I have had regard to the previous static caravans on the site. However, Unit 1 was used for storage and Unit 2 was unauthorised. Accordingly, those units do

not provide a reason to permit the change of use before me. As I have indicated in relation to the ground (d) appeal, I am not persuaded that a residential use continued for a 10 year period prior to the enforcement notice being issued.

34. The mobile home is currently occupied by the appellant and her partner, who both tend to the horses and take care of the land. I appreciate the benefit of living on the site in terms of the care of the horses. However, horses are routinely kept without a permanent on-site presence and I do not have evidence to show any special need for such a presence in this instance. Accordingly, I attach only limited weight to this consideration. I accept that the security of the site is improved by having someone living on the site and attach a small amount of weight to this as well.
35. The appellant has suggested that conditions could be used to limit the residential use to her lifetime or, alternatively, to a fixed period of perhaps 3 years. Although this suggestion is put forward in relation to the appeal on ground (f), the suggestion of conditions indicate that it is more relevant to the ground (a) appeal.
36. It is suggested that a 3 year period would allow time in which the appellant could seek planning permission for a more permanent dwelling at the site. However, there is nothing before me to indicate any progress towards or likelihood of securing planning permission for a dwelling. Accordingly, I can see little justification for this approach and attach little weight to this consideration. Although a temporary planning permission would be less harmful than a permanent one, there would still be harm to the Green Belt and the character and appearance of the area. Nor can I see justification for a permission limited to the lifetime of the appellant, which would appear likely to allow the use to continue for a substantial period.
37. I have considered the other conditions suggested by both parties, but none would significantly reduce the harm arising from the development.
38. The appellant and her partner would lose their current home as a result of the enforcement notice. This is an important material consideration and would also represent a serious interference with their right to respect for private and family life and the home, as outlined in Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. This is a qualified right, and interference may be justified if it is necessary and proportionate.
39. I have noted the references to Policy DM19 of the Development Management Plan and Policy H7 of the Core Strategy. However, these relate to the provision of temporary agricultural dwellings and gypsy and traveller accommodation and have no bearing on my decision.

Conclusion – ground (a)

40. I attach substantial weight to the harm to the Green Belt. There is additional harm to the character and appearance of the area.
41. Having considered all matters raised in support of the development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified, even for a temporary permission. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt

policy set out in the Framework. While the notice would result in the appellant and her partner losing their current home, I cannot see that the aim of protecting the Green Belt could be achieved by any other means which would cause less interference with their rights under Article 8, as outlined above. In my judgement, and bearing in mind also my decision in relation to the ground (g) appeal, dismissal of the ground (a) appeal is a necessary and proportionate response, and would not result in any violation of those rights,

42. For these reasons, the appeal on ground (a) fails.

The appeal on ground (f)

43. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. This may be achieved by, amongst other things, discontinuing any use of the land or restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. It is evident from the case the Council has put forward and the requirements of the notice that the notice seeks to remedy the breach of planning control.
44. Requirement 1 is to cease the use of land for the siting of a mobile home for human habitation. This is consistent with the breach of planning control and the purpose of the notice. It does not exceed what is necessary to remedy the breach of planning control.
45. The appellant suggests that the notice could be changed to allow her to remain in the unit for a temporary period. I have considered this suggestion in relation to the ground (a) appeal and conclude that it is not justified.
46. Step 2 requires the removal of the mobile home from the site. It is requested that this is amended to allow the retention of the mobile home on the site, to be used for storage purposes in connection with the equestrian use, to provide a toilet on the site and to provide a warm area for the appellant's dogs during the day. The appellant would be willing to take steps, including the removal of facilities, to ensure that the mobile home could not be used for residential purposes.
47. However, the large mobile home has clearly been brought to the site in connection with the unauthorised use. The retention of a unit of this scale and nature for the uses the appellant suggests is excessive. It has the appearance of a dwelling, so harming the rural character of the area, and harms the openness of the Green Belt. In accordance with s173(4)(a), it is legitimate for the notice to seek to restore the land to its condition before the breach took place, and this measure is necessary in order to achieve that. Accordingly, while I can appreciate that the mobile home could serve the purposes the appellant suggests, I conclude that the requirement should remain.
48. Requirement 4 requires the removal of any pipes, cable or sewage systems used for the use of the land for siting a mobile home for the purpose of human habitation. The appellant wishes to retain the electricity supply to the site in order to provide light and heat in connection with the equestrian use. The Council raises no objection to this and I can see no reason to take a contrary

view. I will amend the notice to clarify this requirement. To that extent only, the appeal on ground (f) succeeds.

The appeal on ground (g)

49. The appellant requests that the time period be extended to 12 months for all the required steps in order to allow time to raise funds to carry out what is required and find a new home, and to take account of the possibility of wet ground preventing the unit from being moved during certain times of the year. The Council raises no objection to this. I have no detailed information about the difficulties relating to wet ground. Nevertheless, the 12 months suggested is an appropriate and proportionate period of time to allow for the appellant to find a new home and make the appropriate arrangements.
50. For these reasons, the appeal on ground (g) succeeds.

Peter Willows

INSPECTOR