



Appeal Decisions

Hearing Held on 25 November 2020

Site visit made on 26 November 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2020

Appeal A: APP/L3815/C/20/3247320

Appeal B: APP/L3815/C/20/3247321

Land North of The Grange, Woodmancote Lane, Woodmancote, Emsworth, West Sussex

- 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 Chris Hatton (Appeal A) and Mrs Jackie Hatton (Appeal B) against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 15 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to the stationing of two mobile homes for the purposes of human habitation.
 - The requirements of the notice are: (i) Cease the use of the Land for the stationing of two mobile homes for the purposes of human habitation. (ii) Remove the mobile homes, touring caravans, shed, water containers and storage container from the Land. (iii) Break up the hardstanding in the approximate position shown on the attached plan to the notice and remove the resulting debris from the Land. (iv) Following compliance with (i) to (iii) above, reinstate the land levels and re-seed with grass.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an 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 C: APP/L3815/W/20/3253922

Stella Farm, Land North of The Grange, Woodmancote, Emsworth

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Hatton against Chichester District Council.
 - The application Ref 20/00237/FUL, is dated 30 January 2020.
 - The development proposed is: Erection of a polytunnel to house fish tanks for a hydroponic / aquaponic fish farm.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice upheld with corrections and variations.

Appeal C

2. The appeal is dismissed.

Preliminary Matters

3. This appeal has been determined by means of a combined procedure with the Hearing predominantly focussed upon the planning merits of the developments before me. I have then determined the remaining grounds of appeal on the basis of the written evidence, as this can be clearly understood, and so no further discussion was required. No objections were received, and I do not consider that injustice to the parties would arise from this course of action.
4. The appellants confirmed during the Hearing that it was their intention by means of the ground (a) appeal to secure planning permission for two single unit static caravans for a temporary period of 3 years. This could then be conditioned accordingly. It was also confirmed that a permanent planning permission is sought for the proposed polytunnel because of the scale of the investment.
5. The Council confirmed during the Hearing that had the planning application concerning the polytunnel been determined, it would have been refused on the basis of harm to the character and appearance of the area as well as concerns about need/scale. The appellants confirmed that they had already understood this to be the case. Injustice to the parties does not therefore arise from determining the appeal against non-determination on this basis.

Appeals A and B

The ground (b) appeal

6. For the ground (b) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the stationing of two mobile homes for the purposes of human habitation, had not occurred as a matter of fact at the time the enforcement notice was issued.
7. It is the case of the appellants that there was actually only one mobile home. The Council accepts this, albeit they also refer to the presence of other caravans at the site. The Council confirms they would be happy for me to correct the notice using my powers under s.176(1) of the Act.
8. Given there is no dispute between the parties that the residential use of the site had taken place at the time the notice was issued, it would be appropriate to correct the notice. Injustice to the parties would consequently not arise from this course of action. This can be done by simply describing the unauthorised use as a residential caravan site and with it the consequent requirements for cessation and removal of such caravans from the land. There is also no dispute between the parties that the mobile home at the site is a caravan for planning purpose and so it would still be caught by the corrected requirements of the notice.
9. The appellants have also raised the hardstanding under this ground of appeal. However, the hardstanding does not form part of the alleged breach of planning control; rather, it forms part of a requirement, as the Council considers it to be primarily associated with the residential use enforced against.

It is therefore only possible to correctly consider the hardstanding under the ground (f) appeal, which the appellants have also pleaded. Moreover, it is clear to me from my site visit that the laying of some form of hardstanding has occurred as a matter of fact, and so the issue is whether it is excessive for it to be removed in order to remedy the breach of planning control enforced against.

10. The appeal on ground (b) therefore succeed to the limited extent described above.

The ground (a) appeal and appeal against non-determination (Appeal C)

Main Issues

11. The main issues are:

- i. whether there is an essential need for caravans to accommodate a rural worker; and,
- ii. the effect of the developments on the character and appearance of the area.

Reasons

12. The site is located in rural surroundings and accessed via a track. It amounts to an approximate 12-acre rectangular parcel of land, subdivided into smaller fields and bounded by some hedgerows.
13. The developments before me concern a residential caravan site, for two static caravans, as well as a polytunnel which is intended to house fish tanks for a hydroponic/aquaponic venture.

Essential need

14. 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 parties agreed during the Hearing that the Council's approach to residential development within the District, including Policies 37 and 45 of the LP which I shall later address, are broadly consistent with the housing approach set out in the National Planning Policy Framework (the Framework).
15. The appellant's run an existing business which I was told is located approximately 20 minutes travelling time from the appeal site. It specialises in the supply of hydroponic/aquaponics systems as well as food. It is proposed that this business will continue to operate, albeit staff members will be recruited to enable the appellants to then run and provide the labour for the proposed enterprise at the appeal site themselves. I accept, based on the evidence before me, that the appellants have the necessary horticultural and agricultural background as well as experience and ability, particularly Mr Hatton.

16. The appellants state that there are three key elements of the enterprise being developed at the site. This is the growing of hemp on approximately 1 acre of land as well as mixed animal husbandry in the form of a very small number of sheep and alpacas; the latter of which are proposed would generate a further small income by providing walking experiences. I was able to see during my site visit the very small number of animals referred to as well as three hemp beds that had been harvested earlier in the year. The substantive element is then the proposed hydroponic/aquaponic venture.
17. It was accepted by the appellant's agricultural appraiser, Mr Holt, during the Hearing that the hemp and animals would not amount to an essential need for a rural worker to live at the site. It therefore follows that any essential need for residential accommodation at the site hinges upon the proposed hydroponic/aquaponic venture.
18. Specialist hydroponic/aquaponics is defined as the raising of fish and plants in one interconnected soilless system, and which in the case before me would result in the production of rainbow trout and lettuce/salad crops. I was advised during the Hearing that these techniques have been used since the 1970's although it is only since Government funding was introduced in 2014 that there has been wider uptake.
19. It was confirmed to me that such techniques can be undertaken from within existing buildings and therefore whilst I accept the venture is an agricultural one, it need not necessarily be undertaken on agricultural land. However, using an existing bricks and mortar building would require the need for substantial artificial lighting. This is then not then required if housed in a polytunnel, albeit there are factors such as temperature changes and wind damage to this type of structure which count against it.
20. The proposed polytunnel would be a sizeable structure at some 36.5m in length and 9.1m in depth. I was advised during the Hearing that the size of the polytunnel had been arrived at by what was described as the 'golden ratio' in order to provide for an appropriate water and surface area for the proposed crops as well as working space and that for equipment. I was also advised the proposal was based upon a one-man unit derived from an aquaponics publication. This helps to explain the need for a polytunnel of this size although I do not have the specific evidence referred to before me.
21. The appraisal for the proposed venture recognises that the Standard Man Day (SMD) figures provided are entirely theoretical. I was advised during the Hearing by Mr Holt that there are other examples where this is also the case. That so, he still stated that this was a more unusual enterprise and that even the theoretical SMD figures he provided were subject to a range of plus or minus 15%.
22. The appellants advance a sight and sound argument to underpin their essential need to live at the site. This principally concerns any failure of equipment that could lead to the imminent death of the rainbow trout, although crop failure could also occur.
23. During the Hearing I focussed upon the topic of water pump failure as this was raised in the appraisal, albeit I recognise that other systems failures can occur and other controls, such as temperature, need to be carefully monitored.

24. It is recognised that water pumps are fairly reliable, particularly with good maintenance. I was told that if there was a failure of equipment at the site, a worker would need to be present to fix this within 20 minutes of it occurring.
25. It is however in my view not that clear-cut. I was told during the Hearing that each part of the hydroponic/aquaponic system contains 2 water pumps and so if one fails, an alert would be raised, but the remaining water pump would still be sufficient. Given the said reliability of water pumps, the likelihood of two failures in close succession is in my view even less likely. Even if there is a fuse failure, I do not see why a dual system would not be used, thus keeping the other water pump live.
26. It was highlighted there could be an outage if there was a complete power failure – and this would affect more than just the water pumps. However, I was advised during the Hearing that the site is off-grid and therefore has its own solar system for electrical power. Going forwards, it is proposed to have a Tesla based system incorporating batteries for storage as well as a back-up generator. In my view, with such a system in place, the likelihood of a complete power failure is very limited.
27. Moreover, during my questioning about alert systems and technological solutions, Mr Hatton stated that he did not want to invest heavily in technology. This causes me considerable concern.
28. The site is an isolated one and is more difficult to access than might otherwise be the case given the narrow and largely un-made track that serves it, along with locked gates, given it is a shared track. I was nevertheless told it was purchased with the proposed venture in mind. I was also told during the Hearing that the appellants now live permanently at the site, having since sold their previous home which was located approximately 30 minutes away.
29. It therefore appears to me that an isolated site was purchased for a proposed venture that need not necessarily be undertaken on agricultural land. Moreover, a property has been sold that was not a considerable travel time from the site. Even if I am wrong about the likelihood of a complete power failure, the admission of the appellants about not wanting to invest heavily in technology indicates to me that there are other solutions, including for security, than needing to live at the site, and which possibly could have meant retaining their previous home. This weighs heavily against an essential need argument.
30. During the Hearing I also focussed upon the Year 3 (2022) financial figures that had been provided in the appraisal. By some considerable margin, the sales of lettuce are said to generate the largest income. I however have very limited evidence to underpin the proposed sales prices, and, I also raised during the Hearing that 21,000 units of lettuce are proposed to be sold. I was then advised this equated to 57 units per day (i.e. on average every day of the year 57 units of lettuce would have to be sold). I was told this was realistic, but the evidence is that sales would only be generated via a farmer's market as well as an unquantified number, described as 'some' during the Hearing, direct to retailers. The latter would of course then be sold at a lower wholesale price, which would reduce profits.
31. It therefore remains that I have very little market-based evidence before me to support the view that this number of units can be sold by the means specified and for the prices stated. There is then also limited indication in the figures

- before me as to how much labour is required to attend the farmer's markets, and the costs of this, in order to generate the proposed sales.
32. Furthermore, if only the hydroponic/aquaponic venture is considered, being the venture the appellants contend amounts to an essential need to residentially occupy the site, Mr Holt advised that this would leave a net adjusted profit of approximately £2000. Whilst it was then said that this remained viable in its own right, I return to my concerns about the likelihood of delivering the sales and prices proposed and that the SMD figure was liable to a margin of plus or minus 15% - all of which would have a significant bearing on viability.
33. Given this is an entirely new venture for the appellants, and that this type of enterprise is said to be more unusual in any event, there is further considerable doubt in my mind that it would be viable, even then accounting for the other elements. The alpaca walking could not be said to be an agricultural activity and despite previous Hemp crops produced by the appellants at the site, no sales figures have been provided to then support the projections.
34. I have sympathy for the appellants and their desire for a hydroponic/aquaponic venture. However, on the basis of the evidence before me, the proposed venture does not support an essential need for a rural worker. Policy 37 of the LP therefore fails to be satisfied in that the provision of on-site accommodation is not essential for the operation of the proposed business; or indeed that which currently exists at the site. Policy 45 of the LP also only permits development where it requires a countryside location, and I have accordingly not found this requirement in respect of the stationing of caravans to accommodate a rural worker at the site.
35. There remains dispute between the parties about the availability of other accommodation within the area. However, as I have found that there is not an essential need for a rural worker at the site, that there has been the sale of a property, and, my concerns about the viability of the enterprise as a means of underpinning any essential need, I shall not consider this matter in specific detail.
36. I conclude that there is not an essential need for caravans to accommodate a rural worker. The caravan site use is therefore in contravention of Policies 1, 2, 37 and 45 of the LP as well as Section 5 of the Framework. This is a matter to which I attach substantial weight.
37. It was agreed during the Hearing that the emerging Westbourne Neighbourhood Plan (the NP) should only attract limited weight, but I nevertheless find the development to be contrary to Policy OA1 for the same reasons.

Character and appearance

38. The site consists of approximately 12 acres of land rising to the north. It is part of a mosaic of land which is of predominantly open agricultural appearance. It has however been the subject of some more recent subdivision by means of fencing. Whilst there is built development in the area, in the form of dwellings and barns, this is primarily related and in close proximity of Woodmancote Lane to the south. There is also sporadic development along Common Road to the north, from which the site is vehicularly accessed.

39. In contrast, the site is located between these roads and part of the mosaic that I have identified. It is not well related to an existing farmstead, group of buildings or located close to an established settlement in terms of having any intrinsic built or spatial relationship that has been brought to my attention.
40. The site is thus elevated in relation to Woodmancote Lane. Whilst I appreciate it does not form part of any designated landscape, such as a National Park, and is not identified as forming part of a panoramic viewpoint with the NP, it is nevertheless an otherwise attractive parcel of open agricultural land which forms part of the intrinsic and distinctive local landscape character of the area.
41. There is a Public Right of Way (PRoW) to the immediate western edge of the site which is said to provide a route between the village of Woodmancote and the South Downs National Park. Users are therefore afforded direct views into the site, notwithstanding the subdivision that has taken place. The presence of the PRoW means that users, even if limited in number, will be acutely aware of the development at the site, and which I was able to observe for myself during my site visit. The presence of the PRoW makes the site far more conspicuous from the public realm than otherwise would be the case and it is therefore sensitive to visual change.
42. Whilst the area is shaped by farming and there are agricultural developments in the area, there are no static caravans or polytunnels in the immediate area. An aerial photograph was provided during my site visit which was annotated to identify the location of two polytunnels. However, these are located some considerable distance from the site, and the one that I was able to subsequently identify was in close proximity of a building and behind substantive natural planting¹. Whilst a polytunnel is therefore an agricultural structure, I do not find it, or indeed static caravans, typical forms of development in the immediate area. The introduction of residential caravans at the top of the site are, in particular, at-odds with this intrinsic rural character of the area.
43. The polytunnel would be located in relatively close proximity of where the caravans are currently stationed and would represent a large white/opaque structure. It would be sited east-west and so its longest elevation, being some 36.5m, would face in a southerly direction. It would also be substantially larger than either the polytunnel or barn previously considered at appeal in this regard².
44. The introduction of these developments would therefore not recognise distinctive local landscape character. I also do not accept that these developments would enhance the character of the surrounding area or site.
45. I also do not accept that planning conditions, such as landscaping or cladding, amongst other things, could minimise the impact I have identified given the scale of the developments concerned and their siting at a site that is sensitive to visual change.
46. I conclude that the developments are harmful to the character and appearance of the area in contravention of Policies 33, 37, 45 and 48 of the LP. These policies, amongst other things, require development to where possible enhance the character of the surrounding area and site, minimise the impact on the

¹ Land near Monk's Hill

² APP/L3815/W/18/3206618

character and appearance of the area, and, recognise distinctive local landscape character. For the same reasons the development fails to comply with the achieving well-designed places and conserving and enhancing the natural environment aims of the Framework. This is a matter to which I attach considerable weight.

Other considerations

47. The site currently provides a home to the appellants and their children, but they moved from a property and I am not persuaded on the evidence before me that similar accommodation could not be returned to. The appellants have also worked hard to improve the quality and appearance of the site in general, including to provide a wildlife corridor. I however afford these considerations only limited weight.
48. Whilst not raised as a reason for issuing the enforcement notice, the site is located within the 5.6km zone of influence of the Chichester and Langstone Harbours SPA (SPA), which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended).
49. The Council has however not undertaken an Appropriate Assessment and so I queried the respective position of the parties during the Hearing. The Council advised that because the residential use was only a temporary one, no mitigation would be sought. The appellant was happy with this approach.
50. Planning permission should however 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. Therefore, had I been allowing the appeal, in light of a Court judgement³, as the competent authority I would have been required to undertake the Appropriate Assessment. The parties were therefore afforded additional opportunity to provide me with the necessary information, but as I am now dismissing the appeal on other grounds, I need not consider this matter further.

Planning balance

51. The Government is seeking to significantly boost the supply of housing and the proposal would make a contribution, albeit modest, to this supply. However, a single unit of residential accommodation brings only moderate benefits to the economy and very limited benefits to the social well-being of the local community.
52. Moreover, I have not found there to be an essential need for a rural workers accommodation and found harm to the character and appearance of the area. Even though the polytunnel would facilitate an agricultural business and that the site currently provides a home to the appellants and their children, these and any other benefits are not sufficient to outweigh the harms I have identified. It is therefore a proportionate response to dismiss the appeals.

³ Court of Justice of the European Union (CJEU) 12 April 2018: People over Wind & Sweetman v Coillte Teoranta

Conclusion

53. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) as well as the appeal against non-determination should fail.

The ground (f) appeal

54. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
55. I have already considered the planning merits of retaining the mobile home subject to conditions as part of the ground (a) appeal. In light of my findings, it is therefore not excessive for the residential caravans to be removed from the land.
56. Irrespective as to whether the hardstanding identified by the Council amounts to development, it can be required to be removed if it was part and parcel of the use enforced against. However, I consider on the evidence before me that it was not primarily associated with the residential use, as it provides an area to access the site in general, and hence it is not necessary to require its removal to remedy the breach of planning control. Similarly, the shed, which I also viewed during my site visit, is akin to a chicken coop and is not primarily associated with the residential use. However, it would not be excessive to remove any water containers that support the residential use.
57. The appeal on ground (f) therefore succeed to this extent.

The ground (g) appeal

58. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short.
59. I have already considered the planning merits of retaining the mobile home subject to planning conditions. I appreciate the site now represents the appellant's current home but I have limited evidence to demonstrate on the balance of probabilities that there is a scarcity of accommodation within a reasonable distance and also note the evidence provided by the Council of housing options, including to rent.
60. A period of 9 months would however not be excessive in order to relocate from the site and comply with the requirements of the notice, based upon the evidence before me. To consider longer would however unnecessarily perpetuate the breach of planning control.
61. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

62. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice subject to corrections and variations and refuse to grant planning permission on the deemed application as well as on the appeal against non-determination.

Formal Decisions

Appeals A and B

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

- deleting the words "Without planning permission, the material change of use of the Land to the stationing of two mobile homes for the purposes of human habitation." and their replacement with the words "Without planning permission, the material change of use of the Land to a residential caravan site."
- deleting the words "(i) Cease the use of the Land for the stationing of two mobile homes for the purposes of human habitation." and their replacement with the words "(i) Cease the use of the Land as a residential caravan site."
- deleting the words "(ii) Remove the mobile homes, touring caravans, shed, water containers and storage container from the Land." and their replacement with the words "(ii) Remove the residential caravans, water containers and storage container from the Land."
- deleting the words "(iii) Break up the hardstanding in the approximate position shown on the attached plan to the notice and remove the resulting debris from the Land." in their entirety.
- deleting the words "(iv) Following compliance with (i) to (iii) above, reinstate the land levels and re-seed with grass." and their replacement with the words "(iii) Following compliance with (i) and (ii) above, reinstate the land levels and re-seed with grass."
- substituting "Nine months" as the time for compliance.

64. Subject to these corrections and variations the appeals are 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 C

65. The appeal is dismissed.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Robert McLennan	Agent
Mr Charles Holt	Agricultural Appraiser
Mr & Mrs Hatton	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Steven Pattie	Planning Officer – Planning Enforcement
Mr Martin Mew	Principle Planning Officer
Mr Callum Thomas	Planning Officer

INTERESTED PERSONS:

Mr Richard Hitchcock	Westbourne Parish Council
Mr Roy Briscoe	Ward Councillor, Chichester District Council
Mrs Alison Ayling	Local resident
Mr Anthony Douglas-Hamilton	Local resident
Mrs Brigitte von Borstell	Local resident

DOCUMENTS

- 1 Annotated aerial photograph provided on behalf of the appellants
- 2 Council's written SPA submission
- 3 Appellant's written SPA response