



Appeal Decision

Site visit made on 13 October 2020

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 December 2020

Appeal Ref: APP/B1550/C/19/3238175

Longacre, Lynwood Nurseries, Arterial Road, Rayleigh, SS6 7XT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
- The appeal is made by Mr A Eden against an enforcement notice issued by the Rochford District Council.
- The enforcement notice was issued on 28 August 2019.
- The breach of planning control as alleged in the notice is without planning permission,
 1. The material change of use of land for the stationing of a mobile home used for human habitation (mobile home is shown in the approximate position marked A and hatched on plan labelled plan 1).
 2. The laying of a concrete base to facilitate the stationing of the mobile home (shown in the approximate position shown marked B and shaded green on the attached plan 2) and concrete pavers laid as an access path.
 3. The erection of a raised decking/sitting area (shown in the approximate position labelled C and stippled blue).
 4. The erection of a close boarded timber fence (shown in the approximate position marked by XXXs and marked D to E on plan 2).
 5. The erection of a shed used for domestic purposes as a washroom in the approximate position shown marked G and labelled 'shed' on plan 2.
 6. The erection of a timber extension to an existing brick-built building (the brick-built building is labelled 'barn' and the extension is shown stippled, cross hatched and labelled H on plan 2).
- The requirements of the notice are:
 1. Cease the use of the mobile home for human habitation.
 2. Cease the use of the land for the stationing of a mobile home used for human habitation (mobile home is shown in the approximate position marked A and hatched on plan labelled plan 1) and remove the mobile home from the site.
 3. Break up and remove the concrete base marked B and shaded green on the attached plan 2 and remove the concrete pavers laid as an access path from the gate leading to the mobile home.
 4. Remove the raised decking/sitting area marked C and stippled blue on the attached plan 2.
 5. Remove all domestic paraphernalia from the site such as the domestic bins, washing line etc.
 6. Disconnect and remove the gas cylinders which provide gas to the mobile home and remove any other empty ones stored at the site.
 7. Remove the close boarded timber fence shown in the approximate position marked by XXXs and marked D to E on plan 2.
 8. Remove the dog kennels (shown in the approximate position shown cross hatched brown and labelled L) and any associated hard standing laid to accommodate them.
 9. Remove from the site, the shed shown in the approximate position marked G and labelled 'Shed' on plan 2.
 10. Remove the extension to the brick-built building and its foundations (the brick built building is labelled 'barn' and the extension is shown stippled, cross hatched and labelled H on plan 2).

11. Remove the fence and gate enclosure shown in the approximate position marked by XXXs marked J to K on plan 2.
 12. Remove from the site all resultant materials and debris from carrying out the steps above and restore the land to the condition it was before the breach took place by levelling the ground.
- The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), and (f) of the Act. 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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FORMAL DECISION

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

APPLICATION FOR COSTS

2. An application for costs was made by the Council against the appellant. This is subject of a separate Decision.

THE APPEAL SITE

3. The appeal site is as shown by the red line on the plan attached to the enforcement notice. Accessed from the main A127 Southend Arterial Road it is a narrow strip of land adjoining the western side of a track which serves the appeal site and other developments in the surrounding area. These include a farm to the west and commercial and residential developments to the east.

GROUND OF APPEAL

4. In addition to other grounds of appeal the appeal includes grounds (b) and (d). These are legal grounds of appeal and are distinct from any planning merits of the development. The Courts have held that the burden of proof in legal grounds of appeal rests with the appellant, and the test of the evidence is on the balance of probability. In circumstances where a Council has no evidence of its own, or from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal on legal grounds of appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

THE APPEAL ON GROUND (b)

5. This ground of appeal is made in respect only of the breach referred to at Section 3.6 of the notice - an alleged timber extension shown stippled, cross hatched and labelled 'H' on Plan 2 attached to the notice.
6. An appeal on ground (b) is a claim that the matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact. The onus of proof, on the balance of probability, falls to the appellant who must therefore demonstrate that the construction of an extension has not occurred. It is the appellants case that rather than an extension having been constructed, what actually occurred was works of restoration of part of the existing building (labelled 'barn' on notice Plan 2).

7. His SD¹ in support of his case states that the building was used for car repairs and storage from the 1970's but unused from around 2000 when it was bought by his father. The condition of the timber part of the building deteriorated and by 2011 he had covered it over with a tarpaulin. He states he then repaired the existing walls and added a more robust new roof while the footprint remained unchanged. Appendices AE4 and AE5 to his SD show the purchase of some building materials and related items. However, other than this brief reference to the existing walls and new roof, there is no detailed description of the precise nature and scale of all of the works carried out.
8. Aerial images of the building² said to date from 1999, 2003 and 2013 are unfortunately quite blurred. They do not add any significant evidential value in answer to the question of whether the timber building, as existing at the date the notice was issued, constitutes repairs and restoration as claimed, or whether the works amounted to a new-build extension.
9. Turning to the Council's evidence and appendices, it includes photographs taken by officers during a site visit in 2009³, also referred to by the appellant⁴. Although they do not show the entirety of the building, it appears to be in a very poor condition with an incomplete sagging corrugated roof and a missing section from the wall boarding. I acknowledge the photographs alone are not conclusive, however in my judgment they indicate to me a building that in 2009 appeared derelict and beyond repair. Also of note is that the front section of the corrugated pitched roof follows the tiled roof plane on the main brick building.
10. The building as it exists now, different to the 2009 photographs, has relatively new boarding to all external walls, and new double glazed windows and door. Also the external walls are higher than in 2009 in order to accommodate the new flat roof which now extends horizontally to the front well above and beyond the plane of the original pitched part of the roof. Hence, it is a larger building. During my inspection I observed that none of the older fabric evident in the 2009 photographs of the walls and roof appeared to remain in place, and there is no convincing evidence in the appellant's submissions that supports a contrary view. The works undertaken over a period of time also include those to the interior of the building which is internally divided into separate rooms with new flooring, skirting, walls, plumbing and electricity supply. For these reasons I find that it is a new and materially larger building than existed in 2009.
11. Overall, the appellant's evidence is limited in its description of the actual works that were undertaken and is imprecise. Moreover, it is contradicted by the Council's evidence as set out above. On the balance of probability I conclude that the works carried out constituted a new replacement building rather than works of restoration as claimed. Consequently, the appellant has failed to demonstrate that at the date the notice was issued the matters alleged had not occurred.
12. The appeal on ground (b) fails.

¹ Appellant's Statutory Declaration

² Appellants' Statement of Case, paras 2.13 - 2.15

³ RDC11(1), RDC13(2)

⁴ Appellants' Statement of Case, paras 2.17 - 2.19

THE APPEAL ON GROUND (d)

13. This ground of appeal is made in respect only of the breach referred to at Section 3.1 of the notice - the alleged material change of use of the land for the stationing of a mobile home used for human habitation.
14. To succeed on this ground, the appellant must prove on the balance of probability that the use of the land for the siting of a mobile home⁵ (MH) used for human habitation began on or before 28 August 2009 (referred to hereafter as the "relevant date") and that the use then actively continued for at least 10 years with no significant interruption. The appellant's case broadly is that he has lived in the MH (and previously a touring caravan) from 2008, first by himself and then with his family from 2016.
15. Although not referenced in his SD the aerial images in the appellant's SOC are said to date from 2008, 2009, 2011, 2013, 2017 and 2018. However, they simply show burred images of particular moments in time when there may have been a caravan on the land. Critically, they do not provide any evidence of how any caravan was actually being *used* over the relevant period.
16. Appendix AE2 is a series of nine company job sheets for annual servicing of the septic tank on site in October each year from 2010 to 2018. However, they are not original documents that were kept by the appellant, and I am unclear as to the precise nature of their reproduction from records. That aside, they record the yearly removal of 1000 gallons of waste for the 3 years 2016-2018 when the caravan is said to have been occupied by the appellant and his family. However, 1000 gallons is also recorded as being removed for the earlier years 2010-2015 when the caravan is said to have been occupied for only 4-6 days per week and by the appellant alone. This inconsistency, as far as it might relate to the claimed level of occupation and use is not explained. More significantly however, these documents by themselves are only informative of the annual servicing of a septic tank, rather than imparting evidence of the nature of the occupation and use of the caravan. Furthermore, they only go as far back as October 2010, which is after the relevant date, and so do not cover the whole ten year period of claimed use. As such, they carry little weight in support of allowing the appeal.
17. Appendix AE3 comprises 3 electricity bills addressed to the appellant at the appeal site, Longacre, dated between 2010-2012. Other submitted documents addressed to him at Longacre include:- invoices in 2010 and 2011 (AE4, AE5); payments for non-domestic rates statements in 2008 and 2009 (AE6); a 2011 receipt for installation of an aerial for the caravan (AE7); and a 2017 non-domestic rates adjustment statement (AE8). It is the appellant's case that these are evidence of Longacre being his residential address.
18. However, I consider that the evidential value of these documents goes no further than demonstrating the existence of the appeal site as an address at which post could be received, and where an aerial was installed (AE7). Indeed, apart from AE8 they all relate to years during which the appellant was also continuing to live for part of the time at the family home in Westcliff-on-Sea. Critically, they do not provide convincing evidence of the nature of the occupation and use of the caravan on site over the relevant ten year period.

⁵ There is no dispute that the mobile home is a "caravan" as defined by the Caravan Sites and Control of Development Act 1960 and sections 13(1) and (2) Caravan Sites Act 1968

19. Having regard to the appellant's documentary evidence overall, I find that it does not provide convincing evidence, either individually or cumulatively, that a caravan has been continuously used for human habitation over the relevant ten year period. My finding is further reinforced by the appellant's own description of his use of the caravan. I turn to this next.
20. In his SD he states: "*I occupied a caravan located on the land when the local planning authority undertook a site visit in 2008*"⁶. However, this wording does not confirm that on the day of the site visit in 2008 he had been permanently living in the caravan, nor does the wording in his SD confirm any continuous habitation from that date onwards. Indeed, he goes on to state that before 2016 he had "*typically lived in the caravan for 4-6 days per week*" while also continuing to live at the main family home in Westcliff-on-Sea.
21. The reference to a typical 4-6 days occupation is quite vague in setting out the precise nature of occupation. I take it to mean that in some weeks it was occupied for 4 days, and in other weeks for 5 or 6 days. No information is provided as to how many weeks were occupied for each of those durations. However, what can be ascertained is that during those years he continued to occupy the family home, albeit for part of the week he also occupied the caravan. Significantly; had the Council visited the site on any part of the week he was not occupying the caravan they would have been unable to take enforcement action because a breach of planning control would not have been occurring during those periods. Consequently, I find that the level of part-time occupation up to 2016 did not amount to a continuous use (and a continuous breach of planning control) such that enforcement action could have been taken by the Council at any time. Even if I am wrong on this particular point, the claimed ten year use of continuous habitation is contradicted by the Council's evidence which I refer to below.
22. During an earlier investigation of the use of the land the Council in 2012 served a Planning Contravention Notice (PCN) on the then landowner Mrs M Eden (the appellant's mother). Mrs Eden's responses in her completed and signed PCN questionnaire⁷ confirms that the land had only be used to store a caravan since 2009 and that it had not been used for living accommodation by anyone. On this basis the appellant's claimed use could not have commenced until after September 2012, hence less than ten years before the relevant date.
23. It is submitted⁸ on behalf of the appellant that I should attach little weight to the PCN, based on conversations (years later) between the Council and the appellant's agent in which it is suggested that Mrs Eden had at the time been nervous of authorities and distressed. However, a PCN is a statutory provision under the Act and, as in this case, includes within the PCN a warning to those responding to it to that failing to respond, or knowingly or recklessly providing false or misleading information, is an offence for which on conviction there are substantial financial penalties. Consequently, I find it unlikely that anyone providing information in response to a PCN would lightly provide knowingly false or misleading information. I attach substantial weight to this document.
24. To conclude on ground (d); the appellant's evidence is imprecise and falls short of demonstrating a continuous ten year period of use of the caravan for human

⁶ Corroborated in T Eden and J Eden statutory declarations

⁷ Dated 15 September 2012

⁸ Appellant's Final Comments

habitation. Furthermore, it is contradicted by the Council's evidence as I have set out previously. I therefore conclude that the appellant has failed to prove, on the balance of probability, that the use was immune from enforcement action at the date the enforcement notice was issued.

25. The appeal on ground (d) therefore fails.

THE APPEAL ON GROUND (a)/DEEMED APPLICATION FOR PLANNING PERMISSION

26. An appeal on ground (a) is that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. The appellant's case in this regard is limited to the breaches at Section 3.1 and 3.6 of the notice - the material change of use of land for the stationing of a mobile home used for human habitation, and the erection of a timber extension to an existing brick-built building.

Main Issues

27. Having regard to the reasons for issuing the enforcement notice and to the parties' evidence I consider the main issues are:-

- (a) whether the MH and timber extension constitute inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2019) and development plan policies;
- (b) the effect on the openness and purposes of the Green Belt;
- (c) the effect on the character and appearance of the area; and
- (d) whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

(a) Whether inappropriate development

Change of use – siting of MH for residential use

28. As a structure the MH is of a considerable size and introduces urbanising development onto previously open land, thereby reducing the openness of the Green Belt. Residential use of the site would inevitably further reduce openness resulting from normal domestic activity, for example from bin storage, garden equipment and vehicle parking. Indeed in this case the existing raised decking/sitting area, timber fencing, kennels, shed and timber extension demonstrate the likelihood of further urbanising effect on openness resulting from a permanent change to residential use.

29. Taking account of these factors I consider that the material change of use of the land for the stationing of the MH for human habitation (residential purposes) fails to preserve the openness of the Green Belt and results in urban sprawl. As such it is not one of the exceptions to inappropriate development listed at paragraphs 145 to 146 of the Framework⁹. Accordingly, I find that it is inappropriate development in the Green Belt.

⁹ National Planning Policy Framework (2019)

Timber extension

30. The appellant argues that the extension should be considered as an exception to being inappropriate development within either paragraph 146(c) or (d) of the Framework.
31. For reasons set out earlier I have found the extension to be a new and materially larger building than the one it replaced. On the balance of the limited evidence before me I conclude that it is a disproportionate addition over and above the size of the original building. It is not therefore an exception within paragraph 145(c).
32. Paragraph 145(d) refers to the provision of replacement buildings. However, the building which is to be replaced must still be existing at the time any application for a replacement building is being considered. Since the original extension no longer exists, because it has already been replaced with a new building, it cannot be an exception under paragraph 145(d). Moreover, the exception only applies to replacement buildings which are not materially larger and in the same use. That is not the case here. Consequently the proposal does not fall to be considered as an exception under Paragraph 145(d).
33. I therefore conclude that the siting of the MH for human habitation and the timber extension to the existing brick-built building are inappropriate development which is harmful by definition. In accordance with Framework paragraph 144 I attach substantial weight to this harm.

(b) Effect on openness and purposes of the Green Belt

34. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. I have already found that the material change of use of the land for siting of the MH for human habitation reduces openness. The timber extension also reduces openness resulting from a physical increase in the amount of built form on the site.
35. For these reasons I find the development would result in a harmful loss of openness and a limited adverse impact on Green Belt purposes which include the prevention of urban sprawl. I attach further weight to this additional harm.

(c) Character and appearance

36. The use of the land for residential purposes, facilitated by the siting of the MH and timber extension, has materially changed its appearance to a more urbanised and built-up form, harmful to its character and appearance. Although the use of timber boarding for external elevations in the timber extension would not be out of character in this area, I consider that the scale of the extension with its flat roof design is incompatible with the larger original brick-built barn. The appellant describes the extension as an improvement on what existed previously, and other buildings in the area comprising an eclectic variety. However, I am unclear as to the design rationale behind the provision of a large flat roof on this extension; it does not sit comfortably with the existing pitched roof barn to which it is attached, or with the mix of other buildings in the area.
37. For these reasons, notwithstanding commercial and residential built form to the east of the access track, I consider that the MH and timber extension appear as

incongruous additions to the former undeveloped and more rural open character of the site and the adjoining land to the west. As such, I find that the development conflicts with Policies DM1 and DM3 of the Rochford District Council Development Management Plan (DMP) (2014) which requires new development to promote the character of the locality to ensure that it positively contributes to the surrounding natural and built environment, including achieving a positive relationship with existing and nearby buildings and a scale and form that is appropriate to the locality.

(d) Other considerations

38. Much weight is placed by the appellant on a claimed “fall-back” position for the MH. It is argued that if the appeal were dismissed the MH could be occupied and used for incidental/ancillary residential purposes if repositioned in the curtilage of the appellant’s mother’s house which immediately adjoins the eastern side of the access track. Thus, it is argued, dismissing the appeal in respect of the MH would result in no overall benefit to the Green Belt.
39. However, such re-positioning of the MH and an ancillary use in conjunction with the main dwellinghouse would be contained both physically and visibly within the context of that existing residential planning unit, rather than extending residential development further out into the Green Belt as is the case now. As such, it would be less harmful to the openness of the Green Belt and to the rural character and appearance of the area than currently. Siting of the MH in his mother’s garden would not therefore result in the same or worse harm than the existing situation and thus is not a true fall-back position as claimed. Accordingly, this matter adds no significant weight in support of allowing the appeal.
40. I have considered whether the use of planning conditions would make the development acceptable but there are none that could overcome the harm to the Green Belt and the character and appearance of the area I have previously set out. That there is sufficient amenity space for the MH also does not make the development acceptable.

Conclusion on ground (a)/deemed application

41. The Framework requires that substantial weight is given to any harm to the Green Belt, and that very special circumstances will not exist unless any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
42. As set out previously the proposed development is inappropriate development in the Green Belt and therefore harmful by definition. I attach substantial weight to that harm. I have also attached further weight to the harm resulting from loss of openness and the adverse impact on one of the Green Belt purposes. Further additional harm, to which I attach significant weight, arises from the adverse effect on the character and appearance of the area in conflict with DMP policies.
43. Against the totality of all this harm the other considerations advanced by the appellant attract very little weight. They do not clearly outweigh the identified harm. As such, very special circumstances, necessary to justify allowing the appeal, do not exist.
44. The appeal on ground (a) therefore fails.

THE APPEAL ON GROUND (f)

45. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the use to cease together with the removal of its associated structures and the timber extension. It is clear therefore that the purpose of the notice is to fully remedy the breach of planning control.
46. The appellant's case relies in part on the claimed fallback position for the MH which I have previously set out does not carry any significant weight in support of allowing the appeal on ground (a). With regard to this ground (f) appeal it is clear that the breach of planning control would not be fully remedied if the MH were allowed to remain on site.
47. Reference is also made to the regulatory provisions of the use of land as a caravan site and the need for a caravan site licence. However, while there is a need for a licence in relevant circumstances, it has no bearing on this ground (f) appeal because the land does not benefit from the planning permission for use as a caravan site within the GPDO¹⁰, and the ground (a)/deemed planning application which would have permitted such use has been dismissed for reasons set out previously. The requirements for remedial works to remedy the breach at Section 5.3 to 5.9 are not excessive as those works were integral to and facilitated the breach arising from the material change of use of the land. There is no convincing evidence before me to indicate otherwise.
48. With regard to the timber extension reference is made to alternative uses set out at Framework paragraphs 145-146. For clarity, these paragraphs only list certain developments and uses which are excluded from constituting "inappropriate development" in the Green Belt. Significantly, they do not exempt any new buildings for other uses from the need for planning permission where such permission is required, as in this case. Moreover, even if there were a potential alternative use, it would not overcome the harm to the character and appearance of the area I have identified resulting from the building's design. The requirement to remove the extension goes no further than remedying the breach and is not therefore excessive.
49. To conclude, the purpose of the notice requirements is to remedy the breach of planning control. It is clear that the requirements to remove the MH, timber extension and other works in order to restore the land to its former condition cannot be excessive, because they go no further than remedying the breach. Any lesser requirements, such as those suggested by the appellant, would not fully remedy the breach of planning control.
50. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

¹⁰ Class A, Part 5, Schedule II, Town and Country Planning (General Permitted Development) (England) Order 2015