The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2020

by Alexander Walker MPlan MRTPI

appointed by the Secretary of State

Decision date: 25 January 2021

Appeal Ref: APP/R0660/C/20/3258078
Holashaw, Hassall Road, Hassall CW11 4XU

- 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 Trevor Hodge against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 17 July 2020.
- The breach of planning control as alleged in the notice is the unauthorised material change of use of Land from a B2 General Industrial use for vehicle repairs to a mixed use comprising B2 General Industrial use for vehicle repairs and a caravan site for the stationing of one residential caravan.
- The requirements of the notice are:
  a) Cease the unauthorised use of the Land as a caravan site for the stationing of one residential caravan and remove the residential caravan from the land.
  b) Break up and remove the concrete base in the approximate location shown hatched blue on the attached plan.
  c) Remove from the land all domestic paraphernalia associated with the unauthorised residential use of the caravan.
  d) Remove all associated service connections to the residential caravan e.g. electric, gas, water, sewerage, telephone, satellite or cable from the land.
- The period for compliance with the requirements is:
  a) 6 months.
  b) 6 months.
  c) 7 months.
  d) 7 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

1. Requirement b) in paragraph 5 of the enforcement notice (the Notice) refers to "the approximate location shown hatched blue on the attached plan". The attached plan does not include a hatched blue area. However, there is a hatched black area in the approximate location of the caravan and its concrete base. As there is only one hatched area and it is evidently clear that that is the area referred to, I do not find that any injustice would be caused to any interested party if I correct the Notice so that requirement b) reads "hatched black" instead of "hatched blue". I shall therefore correct it accordingly.

2. The appellant confirms that a planning application has been submitted for the erection of a dwelling on the appeal site[1]. The Council confirm that the application is currently under consideration. My determination of the appeal before me is based on the matters alleged in the Notice only and not the proposed erection of a dwelling.

The ground (a) appeal

Main Issues

3. The main issues are whether the proposed development would be located in a suitable location having regard to local and national planning policies and whether it would provide adequate living conditions for future occupants, with regard to noise and disturbance.

Location

4. The Council confirms that the appeal site falls outside any defined settlement boundary as identified in the development plan and therefore, for the purposes of local and national policy, it falls within the open countryside. The appellant asserts that there is a 'cluster' of dwellings nearby, on the opposite side of Hassall Road. Notwithstanding the fact the appeal site does not fall within this 'cluster', these dwellings are also within the open countryside.

5. Policy PS8 of the Congleton Borough Council Local Plan First Review (CBCLP) 2005, restricts development within the open countryside. Policy PG 6 of the Cheshire East Local Plan Strategy (CELPS) 2017 goes on to state that within the open countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. There is no evidence before me that the siting of the caravan for residential purposes satisfies any of these requirements.

6. Policy PG 6 also lists a number of exceptions to the limited development it permits. The appellant contends that the proposed dwelling would satisfy exception iii of Policy PG 6. However, notwithstanding that the caravan is not a building, there is no evidence before me that it has replaced a building. There is no evidence before me that the caravan falls within any of these exceptions.

7. Paragraph 79 of the National Planning Policy Framework (the Framework) seeks to avoid the development of isolated homes in the countryside, unless certain circumstances apply. The Court has held that the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

8. In this case, it is not simply about a consideration of proximity to services and facilities, but also about whether the proposed home would be physically and functionally far away or remote from other places, buildings or people. In my judgement, the residential caravan could be so described, as there are occupied houses in close proximity, including Homelea and the cluster of

[1] LPA ref 20/3635C

dwellings further to the northwest on the opposite side of Hassall Road, in addition to the garage building on the appeal site. Accordingly, I do not consider that the residential caravan would result in a truly 'isolated' home in that sense and there is therefore no need for me to explore any of the special circumstances, set out in paragraph 79, that would justify allowing isolated new homes.

9. However, paragraph 79 does not imply that a dwelling has to be "isolated" in order for restrictive policies to apply and there may be other circumstances when development in the countryside should be avoided. So, a proposed development may not be "isolated" as defined but this does not mean that it will accord with development plan policies that seek to prevent the location of new housing outside of settlements. In this case, whilst the residential caravan does not comprise an 'isolated home', and therefore does not conflict with paragraph 79 of the Framework, it nevertheless does conflict Policy PS8 of the CBCLP and PG 6 of the CELPS, which seek to restrict development in the open countryside.

10. I find therefore that the site is not a suitable location for housing, having regard to local and national policy. As such it is contrary to Policy PS8 of the CBCLP and PG 6 of the CELPS.

Living Conditions

11. The residential caravan is within close proximity of the garage building and its associated forecourt/parking area. The garage building has a large shuttered opening in its eastern elevation.

12. Due to the nature of the garage business, a number of power tools and machinery would be used, which would generate significant noise. Given the proximity of the garage to the caravan, this noise would likely be readily discernible from the caravan. Whilst such noise would likely only be in short bursts, for example using an impact wrench to remove wheel nuts, it would nevertheless be significantly loud, which would be unreasonably disturbing to the occupants of the caravan. The sporadic nature of the noise would compound this harm as it would intermittently pierce the otherwise peacefulness of the setting, making it more discernible.

13. Furthermore, the caravan and the garage share the same access and parking/turning area. The movement of cars in and out of the garage and manoeuvring around the site would cause some disturbance to the occupants of the caravan. Whilst this in itself would not be significantly harmful, in conjunction with the noise generated by the garage it highlights the incompatibility of the garage use and the residential caravan being in such close proximity of each other.

14. I acknowledge that the neighbouring dwelling, Homelea, has been adjacent to the garage for a number of years with no complaints regarding noise and disturbance. However, as confirmed by the appellant, he lived in Homelea with his family for many of these years and therefore is unlikely to complain about his own business. Future occupants of Homelea could find that the noise generated from the garage is harmful to their living conditions.

15. In addition, I have had regard to the fact that the appellant lives in the caravan and therefore is unlikely to be disturbed by his own business. However, were I

to allow the appeal, potential future occupants would likely be disturbed to the extent that it would have a significantly detrimental effect on their living conditions. Or, if the garage business changes ownership the noise and disturbance generated by it could have a detrimental effect on the living conditions of the appellant if he still lived in the caravan.

16. I find therefore that the siting of the caravan in such close proximity to the garage business would fail to provide adequate living conditions for its occupants, with regard to noise and disturbance. As such, it is contrary to Policy SE12 of the CELPS, which seeks to ensure that all development is located and designed so as not to result in a harmful or cumulative impact upon noise which would detrimentally affect amenity or cause harm.

Other Matters

17. The appellant argues that by living on site, he does not need to travel to work, thus reducing the number of vehicle movements on the local highway network. However, given the limited number of traffic movements it negates the need for, I attribute this only very limited weight in favour of the proposal.

18. The appellant states that there have been incidents in the past whereby the site has been broken into and I acknowledge his apprehension that the site is susceptible to break-ins given its rural location and the lack of natural surveillance of the site. However, the details of these incidents are limited, with only two incident numbers provided and no details of what, if anything, was stolen. Over the 20-year period that the appellant has been operating from the site, I do not consider two break-ins to be a significant number of incidents of crime that would justify living on the site.

19. During my site visit I noticed a CCTV camera on the garage building and a spotlight. I acknowledge that an on-site presence would provide a higher level of security compared to CCTV and security lighting. However, there is no evidence that alternative security measures would not provide sufficient deterrent to potential wrong doers, such as improved CCTV, security lighting, alarm systems and security gates. Even if I allowed the appeal, it would be unlikely that someone would be present on the site all the times, for example when the appellant is on holiday, shopping, visiting friends/relatives etc. The vast majority of businesses in both rural and urban locations remain viable even though there is no-one living on site to provide the level of security the appeal caravan does, accepting that the risk of break-ins cannot be eliminated. Overall, I attribute the security benefits the caravan provides to the garage business only moderate weight.

20. I acknowledge that being able to live on site is convenient to the appellant and, aside from the security aspect, offers some benefit to the business, such as being able to meet customers dropping off cars out of worktime hours. Therefore, I appreciate his wish to continue living on the site. However, as the Council point out, there are many residential properties for rent within a 3 mile radius of the site. There is no evidence before me why these would not be appropriate for the appellant to live in. Similarly, there is no evidence to indicate why the appellant would need to find alternative premises for the business if he is unable to live on the site, other than for his own convenience.

21. I have given some thought to the appellant's arguments regarding the granting of an occupancy condition that would tie the occupation of the caravan to the

owner of the garage. However, this would effectively be limiting the benefit of a permission to a company, which is inappropriate because its shares could be transferred to other persons without affecting the legal personality of the company. The garage could have numerous 'owners', anyone of which would be able to occupy the caravan. Accordingly, I do not consider that such a condition would be appropriate.

22. I have also considered the imposition of a personal condition that would only allow the occupation of the caravan by the appellant, and any spouse/partner and dependents. Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need. It has not been demonstrated that there is an exceptional need for the residential caravan and therefore I do not find that a personal planning permission would be appropriate.

Balance and Conclusion on the ground (a) appeal

23. From the evidence before me, the residential caravan improves the appellant's work/life balance, the security of the site and minimises vehicle movements by the appellant. However, I do not consider that these outweigh the significant harm arising from the unsuitable location of the site for a residential caravan and the inadequate living conditions it provides for its occupants.

24. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The ground (g) appeal

25. This ground of appeal is that the period for compliance is unreasonably short.

26. The appellant argues that the time to comply with the requirements of the Notice is too short and it should be extended to 2 years for all of the requirements. He contends that the 6 month period to cease the use of the caravan would not give him and his family sufficient time to find alternative accommodation, particularly given the current pandemic crisis.

27. The appellant asserts that he would need time to find an alternative site where he can live and work. However, there is no reasonable justification given as to why he could not continue operating the garage business without him living on the site. The requirements of the Notice do not relate to the garage business. Moreover, there is no justification given for why he would need to find a site where he is able to both live and work, other than for his own convenience. It seems to me that he could find alternative accommodation elsewhere whilst still operating the garage business.

28. I appreciate that the extension of time would allow for the current planning application for the erection of the dwelling to be determined and provide the appellant with some certainty. However, there is no indication that the Council will approve the planning application. Indeed, the Council's response to the appellant's submission for pre-application advice for the dwelling indicates that the planning application would very unlikely receive officer support.

29. Furthermore, as implied by the Council, they have the power to vary the period of compliance under section 173A (1)(b) of the Town and Country Planning Act 1990.

30. I find therefore that, based on the evidence before me, there is no reasonable justification for a compliance period of two years to comply with the requirements of the Notice. The existing periods of compliance for the requirements of the Notice are not unreasonably short and shall remain as six and seven months respectively.

31. The ground (g) appeal therefore fails.

Formal Decision

32. It is directed that the enforcement notice is corrected by: the deletion of the word "blue" in requirement b) under paragraph 5 and the substitution of the word "black".

33. Subject to the correction, the appeal is dismissed, 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.

Alexander Walker

INSPECTOR