



Appeal Decisions

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2022

Appeal A: APP/A2525/C/21/3275026

Appeal B: APP/A2525/C/21/3275027

4a Gimmel's Gate, Sutton Crosses, Long Sutton, Spalding, PE12 9AU

- The appeals are 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 appeals are made by Mr John Heading (Appeal A) and Mrs Rosslyn Heading (Appeal B) against an enforcement notice issued by the South Holland District Council.
- The enforcement notice was issued on 19 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a commercial use to a residential use by the siting of a caravan.
- The requirements of the notice are:
 - (i) Cease all unauthorised use of the land as a residential caravan site;
 - (ii) Remove the caravan from the land; and
 - (iii) Remove all associated domestic structures and paraphernalia from the land associated with the unauthorised use.
- The period for compliance with the requirements is 9 months.
- The appeals proceed on the grounds set out in section 174(2)(b) and (g) of the Act.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Procedural Matters

1. Appeals on grounds (a) and (f) were withdrawn during the lifetime of the appeals. The appeals now proceed on grounds (b) and (g) only.
2. There is no dispute between the parties that when the notice was issued the appellants were living in the caravan on the appeal site, and to this extent the appellants have not interpreted the alleged current use any differently. Nonetheless, this part of the allegation would be more accurately expressed if the wording more directly related to the specific activity/use of the caravan. For the sake of clarity, using powers available to me under s176(1)(a) of the Act, I will therefore correct the description of the current use to "*use for siting of a caravan for residential occupation*". This would not result in any injustice to either party. The description of the previous use of the land is dealt with later under ground (b).

Appeal Site

3. The appeal site¹, 4a Gimmel's Gate, comprises a small area of land fenced off from the bungalow and garden at No. 4 Gimmel's Gate to which it was once attached, now in separate ownership. The caravan subject of the appeals is located within the appeal site.

¹ Appeal site as indicated by the red line area on the enforcement notice plan

Appeal on ground (b)

4. 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. This is a legal ground of appeal and is distinct from any planning merits of the development. The Courts have established that the burden of proof in legal grounds of appeal rests with an appellant, and the test of the evidence is on the balance of probability.
5. The appellants consider that the allegation in the enforcement notice is inaccurate in respect of what is stated as the former use ("commercial use") of the land. No case is made against the accuracy of the alleged current use.
6. The historical use of the appeal site is set out in the parties' submitted evidence. There is no need for me to refer to it all in detail. However, in brief the land was granted full planning permission for a commercial use in 1999². That use continued until no later than 2014 when the appellants say the land was only used thereafter for residential purposes ancillary to the use of the rest of their property at No. 4. Five or so years later, in 2019, when they sold the bungalow and remainder of garden land to new owners they occupied the appeal site (now No. 4a) in the caravan. It is on this basis they assert that for some years prior to the occupation of the caravan the appeal site was used for ancillary purposes in connection with the residential use of No. 4, and thereby the allegation ("from a commercial use") is incorrect.
7. Since no planning permission was granted for a change of use from commercial use back to a residential use after 2014, the Council argues that intervening residential use was unauthorised, and that the last lawful use of the appeal site was for the 1999 commercial use. That it was the last lawful use is not disputed by the appellants. Instead, they argue that it is the former "actual use" that should be cited in the alleged breach, rather than an earlier lawful use.
8. While a planning permission cannot be abandoned, use rights can be so abandoned. But whether that is the case here is not evidenced or argued. Additionally, it is established case law³ that where there has been an intervening unlawful use(s) between the last lawful use and the current unlawful use subject of an enforcement notice, s57(4) of the Act does not provide for the resumption of the last lawful use. The last lawful use may be extinguished by the intervening unauthorised use(s) such that the land may have a nil use. Again, neither party makes such an argument and it is not clear to me from the evidence whether that would be the case here. Thus, while I make no conclusion either way, it may be the case that the notice might properly have referred to a change of use from a nil use if not the actual use.
9. What is clear, however, is that in 2019 when the land was sold and divided, the appeal site, No. 4a, began a new chapter as a physically and functionally separate planning unit from No. 4, now used for siting of a caravan for residential occupation. As such, notwithstanding the parties' opposing positions in respect of what should be specified as the previous use, the alleged breach is in any event absolutely clear in specifying a change of use "to" the current use for residential occupation of the land in a caravan. That is the latest undisputed actual material change in the use of the land.

² Council Ref: H11-0322-99, Erection of totally enclosed building for storage and assembly of stage scenery units

³ *LTSS Print and Supply Services v Hackney LBC* [1976] 1 QB 663, *Young v SSE* [1983] JPL 677 (HoL)

10. In this regard the Courts have established⁴ that while it is mostly useful for an enforcement notice to recite the previous use it is not necessary to do so. Hence, the notice need not recite the former use. Removing that part of the description, only for the sake of clarity, does not prejudice arguments that could have been made on all the available grounds of appeal in respect of the alleged current change of use of the land, and no case is made out to the contrary.
11. I will therefore, for the sake of clarity, correct the allegation accordingly by removing that part which refers to the former use using powers available to me under s176(1)(a) of the Act.
12. The appeals on ground (b) against the notice (as corrected) fails.

Appeal on ground (g)

13. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 9 months. The appellants seek a period of 24 months.
14. I acknowledge that the appellant and his wife have experienced some serious health issues. I also accept that coping and dealing with those issues while simultaneously seeking to secure alternative accommodation, suitable for their health needs and financial constraints, could be more difficult than would otherwise be the case without such issues. Additionally, at the time of writing the Coronavirus pandemic is not yet over which may also add some difficulty in securing appropriate alternative accommodation.
15. With these factors in mind I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. In this context allowing a period of 24 months would be equivalent to granting a two year temporary planning permission which would be unacceptably excessive.
16. In the light of all of these circumstances I consider that a period of 11 months would be more reasonable. The appeals on ground (g) therefore succeeds to this limited extent and I will vary the notice accordingly.

Formal Decision

17. It is directed that the enforcement notice is corrected in Section 3 by:
 - deleting all the words after the word "Land" and substituting instead the words "to a use for siting of a caravan for residential occupation"
18. It is directed that the enforcement notice be varied in Sections 6(i) to (iii) by:
 - deleting "Nine (9)" and substituting instead "Eleven (11)"
19. Subject to the correction and variation the appeals are dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR

⁴ *Westminster CC v SSE & Aboro* [1983] JPL 602, *Ferris v SSE* [1998] JPL 777