



Appeal Decision

Site visit made on 6 September 2021

by Thomas Shields MA DipURP MRTPI

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

Decision date: 18 January 2022

Appeal A: APP/K2610/C/21/3277033

Appeal B: APP/K2610/C/21/3277034

Land at Rodgate, Norwich Road, Marsham, Norfolk, NR10 5SR

- 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 Gary McLagan (Appeal A) and Mrs Carol McLagan (Appeal B) against an enforcement notice issued by the Broadland District Council.
- The enforcement notice was issued on 19 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, the standing of a mobile home for residential purposes.
- The requirements of the notice are:
 - a) Cease the use of the mobile home for residential purposes.
 - b) Remove the mobile home from the site and restore the land to its previous condition.
- The period for compliance is 6 months for requirement (a) and 9 months for requirement (b).
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) and (f) of the Act.

The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary matters

1. The alleged breach of planning control at Section 3 of the notice does not specify whether it comprises operational development or a material change of use. However, the Council have specified 10 years as the appropriate immunity period, which relates to use of land, and the notice requirements at Section 5 in part also relate to cessation of use. Additionally, the appellants have interpreted the alleged "residential purposes" as residential *occupation* of the mobile home. I have also interpreted the notice in the same way.
2. I am satisfied that no party would be substantially prejudiced by my correcting the allegation and requirements in the notice to refer to a material change of use of the land and for residential occupation. I will therefore do so using powers available to me under s176(1) of the Act.

Appeal on ground (b)

3. An appeal on ground (b) is that the matters stated in the notice (as corrected) 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. Additionally, the Courts¹ have held that an

¹ *Gabbittas v Secretary of State for the Environment* [1985] JPL 630

appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the 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 the appeal, provided an appellant's evidence alone is sufficiently precise and unambiguous.

Assessment of evidence

4. The appeal site is an elongated 'L' shape parcel of land with access from both Rodgate and from the main A140 Norwich Road. At the time of my visit I saw that it comprises areas of rough grass, including a shelter for sheep, together with a more neatly cultivated central area of neatly mown lawn in which the mobile home is located. Located close by in this central area is a laid pathway, play swing, and a timber shed containing equipment and tools. Together with the mobile home this central area has a distinct residential character and appearance.
5. The mobile home did not appear to be lived in at the time of my visit, and I note that it was not connected to any mains drainage, water or power. However, for an appeal on ground (b) to succeed it is necessary for the appellants to show that the matters alleged have not "*occurred*" (past tense) prior to the notice being issued. In this regard the appellants' evidence states: "The caravan **will** not be used for residential purpose/only tea or coffee and private toilet use whilst attending field"². This can only properly read as relating to future use of the mobile home, it does not provide evidence of its use prior to the notice being issued.
6. In further written submissions³ the appellants indicate they had use of the land since at least January 2021, later purchasing it in May 2021. It is not clear when or for what use the mobile home was placed on the land. The only indication of its use at that time is that Mrs McLagan spent time there alone to help recovery with some health issues. This is not precise or unambiguous; it does not make clear that the mobile home was not then being lived in, even if only temporarily. The references to non-residential use of the land and mobile home only relate to future intended use, but again that is not evidence that it was not used for residential occupation before the notice was issued.
7. There is no conflicting evidence from the Council beyond the reasons for issuing the notice. The only other information before me is from the occupier of a nearby property who states that she witnessed the caravan being regularly used for recreational and social purposes, including overnight stays with other people. The reference to overnight stays may or may not be indicative of residential occupation, but on balance it does not lend any evidential support to the appellants' case.
8. Having regard to the limited evidence before me I find, on the balance of probability, that the alleged matters have occurred as a matter of fact and so the appeals on ground (b) must fail.

Appeal on ground (c)

9. The definition of 'development' at s55(1) of the Act includes the making of a material change in the use of any buildings or other land, and the carrying out

² Appeal Form Section E: Grounds and Facts (bold font my emphasis)

³ Appellant's emails 30.06.21 and 07.09.21

- of development without the required planning permission constitutes a breach of planning control (s171A(1) of the Act).
10. For this appeal on ground (c) to succeed the appellants must demonstrate that the matters alleged at Section 3 of the notice, as corrected, do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellants and the test of the evidence is on the balance of probability.
 11. The concept of a 'material change of use' is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of the activity from what has taken place previously.
 12. The fact that the mobile home cannot be seen by the general public does not mean that there has not been a material change of use in the character of the land use. Also, the appellants' references to proposed future use of the mobile home and land is not convincing evidence that there had not been a breach of planning control (resulting from a material change of use) at the time the notice was issued.
 13. I am satisfied that the residential use of the land by occupation of a mobile home, where there has been no such use previously, is a clearly visible and distinct material change in the character of the use of the land. That is evident not just from the siting and occupation of the mobile home, but also from the domesticated use and appearance of the land on which it is sited, including the neatly manicured lawn, paving, and play swing, all of which in combination form a typical garden area attached to a residential unit.
 14. Given that there has been a material change of use of the land amounting to 'development' as defined in the Act, it requires planning permission. Since no such planning permission has been granted it amounts to a breach of planning control.
 15. The appeal on ground (c) therefore fails.

Appeals on ground (f)

16. 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.
17. In this regard the corrected notice requires the cessation of the use of the mobile home for residential occupation, its removal from the land, and restoration of the land to its previous condition prior to the breach taking place. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
18. The appellants say they wish to retain the mobile home for feed storage and for making a hot drink and the provision of a private toilet while they tend to the land and look after their sheep.
19. In circumstances where such a facility is employed as a shelter related to agricultural use of land, that shelter use can often be lawful by not requiring planning permission. However, the information before me is very limited indeed

and I am far from clear on the appellants' future intended use of the land, not least as to whether any use would be solely agricultural.

20. The notice only goes as far as requiring the appellants to undo what they have done; by removing the mobile home and restoring the land to its former condition. Consequently, the requirements are not excessive because they do not go beyond remedying the breach of planning control. Any lesser requirements would not fully remedy the breach. Compliance with the notice requirements would not prevent any future use of the land if such use were lawful.

21. The appeal on ground (f) therefore fails.

Formal Decision

22. It is directed that the enforcement notice is corrected by:

- in Section 3 deleting all of the words after the word "permission" and substituting instead: "the material change of use of the land for the siting of a mobile home for residential occupation"; and
- in Section 5(a) deleting "purposes" and substituting "occupation".

23. Subject to the corrections the appeals are dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR