



Appeal Decision

Site visit made on 22 February 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal Ref: APP/L3815/C/21/3282368

Land to the east of Ivy Grange, Keynor Lane, Sidlesham, West Sussex PO20 7NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Roger Slade against an enforcement notice issued by Chichester District Council.
- The notice was issued on 9 August 2021.
- The breach of planning control as alleged in the notice is: The material change of use of the land to a use for the stationing of a mobile home for the purposes of human habitation.
- The requirements of the notice are: (i) Discontinue the use of the land for the stationing of a mobile home for the purposes of human habitation; (ii) Remove the mobile home and storage container building) in the approximate position shown on the attached plan) from the land.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) 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.

Decision

1. It is directed that the Enforcement Notice (EN) is corrected and varied by:
 - Deleting the sentence under section 3 and replacing that with "The material change of use of the land to a mixed use for equestrian purposes and the stationing of a mobile home for human habitation";
 - Amending requirement (ii) under section 5 so that it only reads "Remove the mobile home from the Land".
2. Subject to the correction and variation, the appeal is dismissed, the EN 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.

The Notice and Procedural Matters

3. It is clear from the personal circumstances advanced under the appellant's ground (a) appeal, which I shall consider in detail later in my decision, that the residential occupation of the mobile home is linked with the use of the rest of the site primarily for equestrian purposes. There are already stables on the land and at my site visit I saw that the wider field had been subdivided into smaller paddocks. The mobile home is just inside the site entrance, and it is fenced off from the paddocks. Nevertheless, gates through to the stables and the horse enclosures, along with the functional link between the persons who

live on the land and their horses, mean that in my view the land identified in the EN is one planning unit that is in a mixed use. It would not, therefore, be appropriate to scale back the red line to just capture the mobile home and the immediate land around it.

4. Consequently, the alleged breach of planning control should be corrected to "The material change of use of the land to a mixed use for equestrian purposes and the stationing of a mobile home for human habitation". I recognise that this will widen the scope of the planning application deemed to have been made under the s177(5) of the 1990 Act (the ground (a) appeal). However, the Council raises no objection to the equestrian use of the land. As such, this is not an aspect of the development that I would be focussing on or finding that the equestrian use would be unacceptable.
5. Moreover, the Council accepts that because the requirements of the EN only require the mobile home to be removed and for the human habitation use to cease, the EN with a corrected breach of planning control would be underenforcing by not requiring the equestrian use to also cease. Therefore, by virtue of s173(11) of the 1990 Act, once all the requirements of the EN had been complied with, unconditional planning permission would be treated as having been granted for the equestrian use of the land.
6. In these circumstances, correcting the breach of planning control would not cause injustice to either side. I have considered this matter under 'The Notice' heading because it is important to ensure first that the EN is not flawed. However, even if I had considered this matter under the appellant's ground (b) appeal where the points about mixed use and planning units were put, this could have only led to a partial success under ground (b) because the human habitation of the mobile home would still be in the allegation. Consequently, the EN would not have been quashed. Because I have considered this matter now, I shall not revisit it under a separate ground (b) heading.
7. ENs that attack material changes of use can also require operational development facilitating that use to be removed. In this case the EN is also seeking to remove a storage container from the land. However, the appellant points out that the container is only used for storing equestrian items in, such as jumps, spare fencing and hay. At my site visit I looked inside the container and it did only contain what could be described as general equestrian and related items. It also appears that the container has been on the land well before the mobile home and the residential use commencing. Therefore, in my view the container, whether it is a building or a use of land, is not facilitating the residential use that the Council is concerned about. Consequently, requirement (ii) of the EN should be varied to delete reference to removing the storage container.
8. As with the matter of the alleged breach of planning control, I have considered the circumstances of the container here because it is a notice issue. The appellant's ground (d) appeal is based solely on the issue of the container. Because I have decided to delete this requirement it is not now an issue to reconsider under a separate ground (d) heading. Furthermore, success under ground (d) limited just to the container would not have led to the EN being quashed. The container, and its use, is also the basis of the appellant's ground (f) appeal. Given that this requirement will be deleted, there is no need to consider a separate ground (f) appeal.

9. In view of the above, I am only left to consider the planning merits of the deemed planning application under the ground (a) appeal.

Ground (a) – planning merits

10. The main issues are whether the appeal site is a suitable location for a residential use having regard to planning policies that seek to restrict new dwellings in the countryside, and whether there are any material considerations such as the personal circumstances of the occupiers of the mobile home that may indicate a decision other than in accordance with the development plan.
11. It is accepted that the site is located within open countryside away from any defined settlement boundary where development is restricted to that which meets certain specific circumstances such as requiring a countryside location or meeting an essential local rural need or supporting rural diversification. Therefore, in the context of planning policy, there is no especial countryside justification for retaining the residential use of the mobile home. Consequently, there are in principle conflicts with policies 2 and 45 from the Chichester Local Plan: Key Policies 2014-2029 (CLP).
12. Furthermore, despite some limited services such as a primary school, a service station with a shop, and bus stops just under 0.5km away with routes into Chichester, it seems likely to me that to access wider services such as higher and further education and health facilities, and a broad range of employment, retail, entertainment and cultural opportunities, occupiers of the mobile home would need to travel regularly to other larger destinations. Also, for convenience reasons that is most likely to be by private vehicles which are the least sustainable means of travel. There are therefore further conflicts with the transport and accessibility aims of policies 8 and 39 from the CLP.
13. In view of the above, the appellant has advanced personal circumstances about the occupiers of the mobile home for me to consider that might be a material consideration of sufficient weight to indicate a decision other than in accordance with the development plan. In this public decision it would not be appropriate to set out those personal backgrounds in detail. However, I can assure the appellant and his daughter that I have read this background very carefully. What comes across is a father who, because of his own upbringing, wants to provide for his daughter independent of help from the local authority. The circumstances of how the appellant's daughter has ended up living at the site are also fully acknowledged.
14. Also, the health needs of the appellant's grandson mean that if the appellant did not set out to provide the mobile home for his daughter and her son, what might have been short term emergency accommodation from the Council would not have suited that child's best interests. Living on the site and the connections with the land, the horses, and the other animals is also important to the well-being of the occupiers of the mobile home, particularly the son. It must, notwithstanding the fact that the occupation of the mobile home is unauthorised, be a settled base and I am acutely aware of my responsibility to have regard to what could be the consequences of the appeal being dismissed. Nothing should be more important as a primary consideration than the best interests' of children and here that would involve the loss of their home and disruption to family life and possibly their education. The qualified rights for respect for private and family life, and the protection of property, are therefore

engaged. I also accept that there is support in the local community for the occupiers of the mobile home and it does not necessarily look out of place.

15. Nevertheless, a public authority may interfere with qualified rights to private and family lives, and their property, where there is a clear legal basis for doing so and the action is necessary in a democratic society. It has been held that interference may be justified if it relates to the regulation of land use using development control measures that are recognised as an important function of Government. In this case, there are several important development control planning policies that the residential occupation of the mobile home conflict with. Moreover, whilst the appellant wishes to have a three-year temporary planning permission, in this case the compliance period in the EN is twelve months which would start from the date of this decision. In my view, this is an appropriate time to allow the occupiers of the mobile home to address their future accommodation needs.
16. Taking all of this in the round, the interferences with this home and the family lives concerned would be a justified and proportionate response in accordance with the law and would be the minimum necessary to uphold the aims of the relevant planning policies. Accordingly, there would be no violation of the human rights. Furthermore, the personal circumstances, as important as they are, do not outweigh the harm arising from the development or the conflicts with the development plan. In making this finding I have had due regard to the protected characteristic of the disability of the child concerned.
17. In view of the above, the use of the mobile home for human habitation is not in accordance with the development plan taken as a whole and the material considerations do not indicate a decision other than in accordance with the development plan. Even if the Council is unable to demonstrate a five-year housing supply, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the very limited numerical benefit of only one dwelling, when assessed against the policies in the National Planning Policy Framework (NPPF) taken as a whole. The residential use fails to meet the sustainable development aims of the NPPF.
18. The appellant's obligation that commits to paying a contribution towards the provision of access mitigation measures in respect of the Chichester and Langstone Harbours Special Protected Area is noted. However, as planning permission is not being granted, there is no need for any mitigation measures and so I do not need to consider this matter any further.

Conclusion

19. For the reasons given, the appeal should not succeed.

Gareth Symons

INSPECTOR