



Appeal Decision

Hearing Held on 12 October 2021

Site visit made on 12 October 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2022

Appeal Ref: APP/A1720/C/19/3226178

Land at 137 Newgate Lane, Fareham.

- 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 Patrick Cash against an enforcement notice issued by Fareham Borough Council.
 - The enforcement notice, numbered Enf/82/18, was issued on 6 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, unauthorised operational development by the construction of two buildings for residential purposes.
 - The requirements of the notice are
 - (i) Remove from the site the two buildings constructed for residential purposes;
 - (ii) Remove all resultant materials and debris from the land; and
 - (iii) Reinstatement the land to its former condition.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the plan attached to the notice and its substitution with the attached plan, and the words 'shown cross hatched on the attached plan' are added to the end of the allegation at Paragraph 3 of the notice; and varied by the deletion of step (iii) at paragraph 5 of the notice; and by the deletion of 3 months and the substitution of 6 months as the period for compliance.
2. Subject to the correction and variations, 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.

Application for costs

3. At the Hearing, and dependant on my findings, an application for a full or partial award of costs was made orally by Mr Patrick Cash against Fareham Borough Council. This application is the subject of a separate decision.

Procedural matters and the notice

4. For the avoidance of doubt, the appellant made clear that in the event that the Ground (b) appeal fails, through their ground (a) appeal, they are seeking planning permission for the two dwellings, in addition to the gypsy and traveller pitches, already permitted by the Council. The development would therefore not result in the loss of any gypsy and traveller pitches. Accordingly, the Council agreed that this reason for issuing the notice no longer applies. I have therefore considered the appeal on this basis.
5. Part of the appellant's case made under ground (b), relates to clarity of the notice plan. They submit that the plan attached to the notice is unclear as there are three buildings, rather than the two targeted by the notice. The Council accepts this and have supplied me with an alternative plan with their statement. It was agreed at the Hearing that the notice could be varied with the amended plan substituted, without causing injustice to either party. I shall proceed on the basis of the substituted plan.

Ground (b)

6. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. The onus of proof is on the appellant with the test being on the balance of probability.
7. Turning to their second point, in essence, they submit that the alleged development has not occurred, as both units meet the definition of a caravan. They therefore benefit from the permissions granted in 2015, namely P/15/0343/FP and P/15/1142/VC, for a total of four mobile homes, ancillary day rooms, two touring caravans, two portable buildings and associated developments.
8. Section 29 (1) of the Caravan Sites and Control of Development Act 1960 ("CSCDA 1960") sets out the definition of a mobile home/caravan as: any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not include, (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.
9. It is not in dispute that the units have been designed for human habitation. However, since each base unit was lifted onto the site, but then significantly modified, it is therefore necessary to consider whether the separate roof construction and external cladding affects the units capability of being moved from one place to another.
10. From the evidence, including the short video clip shown at the Hearing, it is clear that each single base unit was delivered to the site by lorry, then lifted over the boundary by crane and manoeuvred onto the pre-prepared metal frames, using temporary wheels. The video shows that the doors and windows were in place on arrival. An outside company then constructed the trussed roofs, and the units were finished with slate roofing tiles and concrete wood effect cladding.
11. There was considerable discussion about how the units as completed, could be moved. The appellant submitted that the units could be jacked up with lifting straps then placed underneath. The whole unit, including the roof and cladding,

- could then be lifted by a crane modified with a metal frame placed above the roof, to prevent distortion to the structure by the straps.
12. The Council's structural engineer gave evidence that, because of the design, materials and additional weight of the roof, the finished unit would be incapable of being lifted and moved, without significant distortion to the main structure. In the absence of compelling evidence to the contrary, I have no reason to come to a different view. I saw that the concrete cladding was designed to be fitted in a similar way to traditional timber cladding, 'plank by plank', rather than larger sheets that could be readily removed. Moreover, I have no evidence to suggest that either the roof or cladding has been designed in such a way to allow it to retain its integrity, and that of the unit as a whole, if moved as proposed.
 13. For the sake of completeness, I have also considered whether the units could be moved by different means such as towing. At my site visit it was clear that each unit remains on the metal frame, with one still having the lifting strap in place between the frame and the unit. There were no wheels, drawbars, towing points or other means, that would allow the units to be moved by towing, rather than lifting. The metal frame itself appeared to be designed more as a frame to provide a level surface, rather than the substantial purpose built skids designed to facilitate mobility, as commonly found on mobile agricultural or equestrian shelters.
 14. I acknowledge the appellant's evidence that one of the units was moved into in different position at some point following delivery. However, it was not clear at what point this took place or whether the roof and cladding works had been completed.
 15. Drawing all of the above points together, I find that the appellant has not provided sufficient evidence for me to conclude that, on the balance of probability, the completed units meet the definition of a caravan in terms of their mobility.
 16. The appellant further submits that if the units do not meet the definition of a caravan, then they are nonetheless not buildings and should be considered as moveable dwellings. In assessing what constitutes a building operation it is necessary to consider factors of size, degree of physical attachment and permanence. Given my findings on the ability of the units to be moved from place to place, I consider that this gives them a significant degree of permanence, both in physical and practical terms.
 17. Overall and for the reasons outlined above, I find that the units lack the necessary mobility to be considered as caravans or moveable dwellings. Consequently, the appeal on ground (b) fails on this submission.

Ground (a)

Main Issues

18. The main issues in this appeal are:
 - Whether the development is in a suitable location for new residential development;
 - The effect of the proposed development on the character and appearance of the area and the Strategic Gap; and

- The effect of the development on nearby European and Ramsar sites, with regard to (a) nutrients, (b) recreational disturbance.

Reasons

19. The site is located between Bridgemary and Stubbington within an important break in development, between Fareham, Stubbington and Gosport. It takes access from the entrance road to Peel Common Wastewater Treatment Works, that lies to the west of Newgate Lane. Newlands Solar Farm lies to the north.
20. Further to the south there is a ribbon of development comprising mainly detached and semi-detached bungalows and two storey dwellings, generally fronting the highway and set within modest front gardens. Albert Road is a spur road found within this linear form of housing and also follows this general pattern of development, with the dwellings fronting onto the highway. The landscape to the east of Newgate Lane is largely undeveloped paddocks and grazing giving the area a sense of being in the countryside.
21. At the time of my site visit, the ground floor for each unit was divided into rooms comprising a fitted kitchen and a lounge. The roof space in both units was accessed by traditionally built staircases and the upper space divided into two rooms. One unit was unoccupied with a kitchen, bathroom, bedroom, a gym and domestic style storage. The other unit was occupied by tenants. This had a similar layout although was not fitted with either a bathroom or toilet. It is not in dispute that both units were brought onto the site to be used as dwellings.

Location

22. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites. Policy DSP40 of the Fareham Local Plan Part2: Development Sites and Policies (2015) (the LP), confirms that where the Council is unable to deliver the required level of housing, permission may be granted for housing sites outside the urban boundary, the countryside or Strategic Gaps, where the following criteria are satisfied: i The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall; ii The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement; iii The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps; iv It can be demonstrated that the proposal is deliverable in the short term; and v The proposal would not have any unacceptable environmental, amenity or traffic implications.
23. The site lies within an area of countryside between Stubbington, Fareham and Gosport, outside the settlement boundary and within the Stubbington/Lee on the Solent and Fareham/Gosport Strategic Gap (the Strategic Gap).
24. Policies set out in the Fareham Local Development Framework; Shaping Fareham's Future; Core Strategy (2011) (the CS), broadly sets out the Council's housing strategy for Fareham. Policy CS14 makes it clear that built development outside the defined settlements will be strictly controlled with a presumption against new residential development outside the settlement boundaries.

25. The preamble to Policy CS22 makes clear that these Strategic Gaps help to define the identity of the defined settlements. The policy also makes clear that proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
26. The development would result in an additional two dwellings. It is not in dispute that this is relative in scale to the housing shortfall, and the limited number of dwellings means that the degree of harm to the Strategic Gap would be limited. Nonetheless, the siting of the dwellings to the north of the existing ribbon of development, physically and visually extends the built form closer to Fareham, thus eroding the integrity of the Strategic Gap.
27. In the context of this rural location, where I accept that accessibility is not normally as good as that of urban areas, the site is located some distance from the nearest urban areas, where a range of health, employment and leisure facilities would normally be located. It is acknowledged that some residents may choose to walk to these services, however due to the distances involved and the need to negotiate Newgate Road East, the location is likely to encourage reliance on private motor vehicles. Accordingly, I do not consider that the scheme provides a viable alternative to the use of private cars for future residents. It therefore conflicts with the environmental objective of sustainable development adding weight to the case for not developing outside of the settlement boundary.
28. Overall, the appeal site falls outside any built up area boundary, within the Strategic Gap. It is thus located in the countryside. Being some distance away from the nearest settlements it does not appear to be well-integrated with any of them. In my judgement it is therefore not in a suitable location for additional housing, where any residential development beyond the boundary established by the local plan, would conflict with the aim of providing homes in accordance with the agreed settlement hierarchy.
29. I acknowledge that the site already has planning permission for a residential caravan site, granted most recently by the 2015 permissions. It is apparent that at the time that these permissions were granted, there were material considerations through an identified need and policy support for providing gypsy sites, that outweighed any identified harm. However, as set out above I have found that the units subject of this appeal are dwellings, rather than caravans and as such there is no similar policy justification for new dwellings in this location.
30. Consequently, the development is contrary to policies CS2, CS6 CS14 and CS22 of the CS and policy DSP 6 and DSP40 of the LP. In summary, these policies seek to control development outside the defined settlements and protect the countryside from development that would adversely affect its landscape character, appearance and function.

Character and appearance

31. In contrast to other residential development in the area, the appeal site is considerably set back from Newgate Lane, being separated by a wide grassed verge with mature trees. The two detached dwellings have been sited away from the entrance along the side boundaries, with their front elevations and decking facing into the site.

32. The design and concrete clad finish of the dwellings, together with their siting and relationship with Newgate Lane takes little reference from nearby development, standing in stark contrast to the surrounding residential development. The roofs of the dwellings are readily visible from the access road and Newgate Lane especially when travelling north. They are also visible from the public footpath that runs along the access road and southern boundary, drawing attention to their unusual orientation in the site.
33. I acknowledge that there is some existing tree and vegetative screening to the site. The established trees sited within the grassed verge to the frontage, in particular provide some screening of the site from Newgate Lane. However, the level of this existing vegetation may not be permanent and is likely to be subject to change month to month and year to year. Moreover, I have no evidence that the trees that provide some screening to Newgate Lane are on land within the appellant's control. Therefore, a condition to retain them is not considered appropriate.
34. I acknowledge that the earlier introduction of caravans is likely to have added a feature that was uncharacteristic to the area. Nonetheless, unlike the low level more traditional mobile homes and caravans, both dwellings have steeply pitched roofs with the appearance of two storey dwellings. They are therefore significantly more intrusive, due to their considerably greater height.
35. For the above reasons I find that the dwellings have introduced a poorly designed, unplanned and incongruous form of development, that is in stark contrast to other residential development in the area, causing significant harm to the character and appearance of the area. Accordingly, the development is contrary to policies CS6 CS14 and CS22 of the CS and policy DSP 6 and DSP40 of the LP. These policies in combination seek to ensure that new development outside defined settlement is strictly controlled and amongst other things would not harm the character of the area.

Effect on European sites

36. The Habitat Regulations 2015 require an assessment to be undertaken, as to whether a proposal would be likely to have a significant effect, on the interest features of a protected site. The appeal site lies within the zone of influence of a number of European designated sites including; the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site; the Portsmouth Harbour SPA and Ramsar site; the Chichester and Langstone Harbours SPA and Ramsar sites; the Solent Maritime Special Area of Conservation; and the Solent and Dorset coast SPA. The development would provide a net increase of two dwellings. Therefore, the development has the potential to cause harm to these designated areas.
37. During the course of the appeal, a new issue arose in relation to the impact of the development on levels of nitrogen and phosphorous in wastewater discharged into the Solent. These chemicals can result in excess algae which adversely affect the habitats and species of the Solent. Consequently, new housing development is required to demonstrate that it can achieve nutrient neutrality.
38. One way that this can be achieved is through the purchase of mitigation credits from third parties. Since the Hearing, a legal agreement has been submitted to enable land at Warnford Park Nitrate Mitigation Land to be taken out of

agricultural use and replanted with woodland. This may provide the necessary nitrate mitigation for the development. Nonetheless, an appropriate assessment would need to be carried out by the decision maker before the grant of any permission and this would necessitate consultation with Natural England. However, as I have already identified, substantive harm to the character and appearance of the area and location of the development, such that the appeal should be dismissed, there is no need to consider this further.

Alternative scheme

39. The appellant submits that if the appeal for the retention of the units is dismissed, then they would wish to retain them to be used as day rooms in connection with the four pitch gypsy and traveller site. A signed unilateral undertaking dated 2 November 2021, has been submitted to the effect that the appellant will relinquish their right to erect the four dayrooms as permitted.
40. The wording of the notice alleges the construction of buildings for residential purposes, rather than dwellings. Accordingly, this would include buildings such as day rooms to be used in connection with the permitted residential use. The retention of the buildings as associated dayrooms could therefore form part of the development, as alleged.
41. It is recognised that dayrooms may vary in layout and size, and the proposal is to relinquish the right to build the permitted four dayrooms, in exchange for these two units. I accept that it would be possible to restrict their use as dayrooms rather than separate dwellings with a suitably worded condition. However, as I have already found that the design and height of the units cause harm to the character and appearance of the area. Consequently, the retention of either one or both, as dayrooms would similarly continue to cause unacceptable harm, that is likely to be greater than that caused by the proposed four day rooms.

Planning balance

42. The Council confirms that it does not have a 5-year supply of housing sites in place. The Council's policies that relate to the supply of housing are therefore out-of-date. Paragraph 11 of the Framework is therefore engaged, which states that permission should be granted unless, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
43. In addition to the existing residential caravan site, I acknowledge that the proposal would provide limited further social and economic benefits. The proposed development would also contribute toward the Borough's targets for housing delivery and 5-year land supply. These factors weigh in favour of the development. However, the proposal would only provide two dwellings, so I attach limited weight to these benefits.
44. Notwithstanding the residential caravan site use, the development does not conform with the Council's settlement strategy, it causes substantial harm to the character and appearance of the area and would create the need for travel, placing it in conflict with the environmental objectives of sustainability as set out in paragraph 8 of the Framework, and this weighs against the scheme. When the Framework is considered as a whole, I find that the scheme does not constitute sustainable development. This is because the positive housing land

supply, and any other benefits, are significantly and demonstrably outweighed by the identified environmental harm. Furthermore, I conclude that the scheme conflicts with the development plan as a whole. The appeal on ground (a) fails.

Ground (f)

45. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). The requirements of the notice were discussed at the Hearing. It is the appellant's case that the third requirement of the notice is vague and does not reflect the lawful use of the land.
46. In this case, the notice is directed towards the buildings with the purpose of the notice, to remedy the breach of planning control by the removal of the buildings, resultant debris and to restore the land. The placing of the two buildings on their metal frames has resulted in minimal physical changes to the land. Accordingly, once the buildings have been removed the purpose of the notice has been fulfilled. The Council agreed that this third requirement should be removed.
47. I consider that the requirements can be varied without causing injustice to either party. The appellant's appeal under ground (f) succeeds to this extent and I shall vary the requirements of the notice accordingly.

Ground (g)

48. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 3 months is too short. The appellant submits that a period of 3 months is not sufficient to allow for the units that are the subject of the notice to be replaced with standard mobile homes.
49. The appeal site already has planning permission for an additional two mobile homes. However, whether the 2015 permissions remain extant, falls outside the scope of this appeal. In the event that they are, then mobile homes would need to be purchased and then located on the site in accordance with the approved plans. Moreover, whilst the appellant and his family do not live in either of the units, I am mindful that one is currently occupied, although I do not know the personal circumstances of that family. My decision means that this family will need to leave their home and will need time to make alternative arrangements.
50. For the above reasons, I consider that a period of 6 months is a more appropriate time to achieve compliance with the notice. To this extent the appeal on ground (g) succeeds and I shall vary the notice.

Other matters

51. My attention has been drawn to a number of other appeal decisions and Judgements. However, each has its own set of circumstances and differ from the current appeal. They therefore do not provide a direct comparison and I give them limited weight.
52. I have considered the rights of the appellant and his family under the European Convention on human rights. This affords the right to respect for private and

family life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. I have also had due regard to the public sector equality duties contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share protected characteristics and people who do not share them.

Conclusion

53. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Ray Smith	Agent
Natasha Dykes	Operations Manager

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Volley	Appeals Manager
Daniel Lord	Enforcement Officer
Natalie Fairclough	Solicitor
Graham Pope	Council's Structural Engineer
Desmond Adumekwe	

INTERESTED PERSONS:

None

Amended plan to be attached to notice – Not to scale

