
Appeal Decision

Hearing held on 26 to 28 October 2021

Site visit made on 29 October 2021

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/J1535/C/18/3215177

Land at Plots 33 to 34 Roydon Lodge Chalet Estate, Roydon CM19 5EF

- 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 P O Connor against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 28 September 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission: The material change in the use of the Land from a recreational leisure plot use to a residential use including the stationing of caravans for residential use, touring caravans and associated development, including the installation of hard standing.
 - The requirements of the notice are:
 - i. Cease the use of the Land as a residential caravan site.
 - ii. Cease the use of the residential use of the Land between 1 November and 31 March inclusive.
 - iii. Remove from the land all caravans, hardstanding, septic tanks and other structures on the land used in connection with the residential use of the Land.
 - iv. Remove from the Land all domestic paraphernalia and debris associated with the residential use of the Land and any debris resulting from compliance with paragraphs (i) to (iii) above.
 - The period for compliance with the requirements is within 6 months after the notice takes effect.
 - The appeal was made 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 as amended.
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DECISION

1. The enforcement notice is quashed.

REASONS

Procedural Matters

2. The appellant was an owner of the land when the enforcement notice was served. The land has since been sold. An appeal may be continued by a subsequent land owner provided that there is a letter of consent from the original appellant. Mr O'Connor has confirmed in writing that he is willing for the appeal to proceed in his name on behalf of the new owner(s).

3. The appeal for Plots 33, 34 was heard together with a number of appeals concerning various plots at Roydon Lodge Chalet Estate (the Chalet Estate) in relation to enforcement notices issued by the Council and against refusals of planning permission.
4. The discussion at the hearing considered the site history, matters specific to the enforcement notices, planning merit issues, plot specific matters and concerns of the Parish Council and residents that formed no part of the Council's case. Even though certain issues were discussed in the round to avoid repetition, each appeal will be considered on its individual merits with a single decision letter addressing the appeal(s) for each plot. A summary of all Decisions is attached for information.
5. I carried out site visits to the Chalet Estate on 25 and 29 October 2021, as well as familiarising myself with the surrounding area on other occasions.

Site and Surroundings

6. The Chalet Estate is located to the north and east of the village of Roydon. In the late 1940s the land consisted of around 50 allotment plots, provided as part of the Dig for Victory campaign during World War Two. The allotments subsequently became leisure plots. On 18 May 1951 enforcement notices were issued requiring each plot to be cleared of all structures. At the same time the Council stated that the intention was not to stop the use of the land for gardening purposes or to prohibit weekend and holiday occupation of a suitable type of chalet during the summer months. Thereafter a planning history has developed specific to each plot or combined plots, which is outlined in the documentation submitted by the Council and the appellant.
7. As to the current position, the Chalet Estate is within the Metropolitan Green Belt and comprises a number of plots of land served by a central access road and a vehicle entrance at its western end. A single track road and a network of public rights of way link the Chalet Estate to the village. A railway line follows the northern boundary, otherwise the plots are bounded by fields to the south and east. A small number of plots are characterised by garden land with a small traditional chalet or appear vacant and overgrown. A number of plots are occupied as caravan sites, most of which are unauthorised. There are also plots with lawful dwellings and a few very recently built chalets. Plots 33 and 34, now a single plot, lie to the north of the access road, just west of centre of the estate.

Enforcement notice and ground (b) appeal

Common ground and proposed corrections to the notice

8. At the hearing there was much discussion about the wording of the enforcement notices issued on 28 September 2018 and more particularly the alleged breach of planning control and the requirements. A discrete point specific to Plots 33, 34 was raised in the appeal on ground (b), that the matters constituting the breach of planning control have not occurred.
9. The appellant considered no material change of use, as described in the allegation, had taken place and no caravans had been stationed on the plot. The Council accepted that caravans were not sited on the plot when the notice was served. That is the Council's final position, despite earlier putting forward a

different view and indicating that the appellant had not provided sufficient information as to when caravans were brought onto the site¹.

10. The appellant confirmed at the hearing that this ground of appeal was now withdrawn in view of the agreement reached with the Council, as set out in the statement of common ground². The parties agree that the alleged breach of planning control should be amended to state: "The material change of use of the land from a recreational leisure plot use to residential use including the installation of hardstanding." The Council proposes, although not in the statement of common ground, the requirements should be amended to state:
 - i. Cease the use of the site for any residential purpose.
 - ii. Remove from the site all hardstanding, septic tanks, and other structures on the land in connection with a residential use.
 - iii. Remove any debris in association with (i) and (ii)³.

Reasons

11. I have a duty to ensure that the enforcement notice is in order and tells the recipients fairly what they have done wrong and what they must do to remedy matters. The power under section 176 of the 1990 Act to correct or vary an enforcement notice may only be exercised if the correction or variation can be done without injustice to either the appellant or the Council.
12. The planning history shows that planning permission was granted for a weekend chalet in 1955. A standard condition was imposed, understood to restrict occupation of the chalet to solely recreational purposes during the months April to October inclusive and excluding the use of the chalet at any time for permanent residential accommodation.
13. The position in 2012, as recorded by the Council, was of a landscaped plot with no development present. The officer report seeking authorisation for enforcement action in July 2018 (the enforcement report), stated that the plot originally contained a chalet joined to a static caravan which had been removed. The report also stated that aerial photographs taken in March 2018 showed the land was partially hard surfaced and a touring caravan was sited there. The laying of the hardstanding was dated to approximately September 2017. This is the information on which it appears enforcement action was authorised. The Council described the site as being partially covered by hardstanding and enclosed by close boarded fencing in September 2019.
14. The appellant's understanding was that the plot was previously enclosed by a high mature hedge and was used as the garden area of plot 16 adjacent, with access taken from that plot. Before the notice was issued, a new gate was erected, hardstanding formed and electricity box installed. A mobile toilet/shower block was on the site for a short while. When the notice was issued the appellant accepted that his intention was to use the plot as a residential caravan site and therefore appealed on ground (a). Occupation occurred at the start of the pandemic⁴.

¹ Council's update statement September 2021 at Section D page 5

² Statement of Common Ground: Matters in agreement page 3

³ Council appeal statement February 2020 paragraph 10.3; Council's update statement September 2021 at Section D page 5

⁴ This would have been about March 2020

15. When I visited in October 2021 the area of the site nearest the road was hard surfaced, with grass on the rear part on the land. A touring caravan was stationed on the land and a couple of vans were parked. The site is now occupied by Mr H Doherty, his wife and their baby son. They have moved onto the land from other plots on the Chalet Estate and Mr Doherty spoke at the hearing. The evidence is that the land now is in use as a caravan site.
16. The key consideration is whether the alleged breach of planning control had occurred by the date of issue of the enforcement notice, that is 28 September 2018. With caravan sites it is not necessary for caravans to be present on the land on the date the notice was issued. However, there must be sufficient evidence to show a significant difference in the character of the activities from what has gone on previously in order for a material change of use to have taken place.
17. The appellant's evidence does not support a material change of use occurring before September 2018.
18. The aerial images included in the Council's documents are not very clear, particularly one of the 2018 aerial photographs⁵, and do not confirm a touring caravan was stationed on the land. An aerial photograph also is a snapshot in time and in this instance indicates very little, if any, use being carried on. A local planning authority may only issue an enforcement notice if it appears there has been a breach of planning control. This test is not met if the authority anticipates a breach of planning control will occur but the breach has not yet taken place. This situation appears to have prompted the notice for Plots 33 and 34. Furthermore, the Council's proposed description of the breach of planning control does not include reference to a caravan or a caravan site (see paragraph 10 above).
19. The only image that indicates caravans on the land is an aerial view dated July 2018 submitted by Parish Council. Two structures near the eastern boundary look like caravans and two or three vehicles look to be on the hardstanding near the road. Caution needs to be exercised over what a single photo shows, bearing in mind the fluidity of events on the estate at that time.
20. This review of the available evidence leads me to conclude that on the balance of probability a material change in the use of the land to a caravan site did not take place before the notice was issued.
21. As to the proposed correction to the description of the alleged breach, the term residential use usually relates to a place where a person lives and a use associated with a form of living or habitable accommodation such as a dwelling house or a caravan and incidental activities. No substantive evidence has been produced to support the carrying out of a material change to a residential use in any form. The laying of hardstanding over part of the site, which could be considered an act of operational development, is not sufficient to result in a material change in land use from a recreational leisure plot.
22. The notice in step (ii) required the residential use of the Land to cease between 1 November and 31 March inclusive. As proposed to be amended the residential use would have to cease entirely. The requirement would be more

⁵ Council's Annex 2 Plot 33-34. The clearer image is in the Council's statement February 2020 page 9 and Council's Appendix 5

severe than in the notice as issued. That being so, the appellant would be worse off and injustice would be caused.

Conclusion

23. I conclude that the enforcement notice as issued does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Alison Heine BSc MSc MRTPI	Heine Planning Consultancy
Christopher Moran	An Appellant
Hughie Doherty	Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes BA Hons MRTPI MCMI	Principal PHD Chartered Town Planners
Mark Beard of Counsel	Instructed by the local planning authority

FOR ROYDON PARISH COUNCIL:

Angelica Rokad of Counsel
Kathryn Claydon

INTERESTED PERSONS:

Canon Anthea Cannell
Councillor Mary Sartin
Vince Parker
Wayne Matthews

DOCUMENTS submitted at the hearing

- 1 Proposed corrections to the enforcement notices
- 2 Draft Deed of Unilateral Undertaking
- 3 Letter of consent
- 4 Document EB402A Tables 1 and 2
- 5 Letter dated 14 December 2016
- 6 Proposed planning conditions
- 7 Representation by Rt Hon Robert Halfon MP
- 8 Roydon Conservation Area Appraisal
- 9 Revised list of planning conditions
- 10 Planning history of plots

ROYDON LODGE CHALET ESTATE APPEALS: SUMMARY OF DECISIONS

Plot number	Appeal refs	Decision Enforcement appeal	Decision s78 appeal
1B	C/18/3215158 W/18/3204576	Appeal allowed, enforcement notice corrected and quashed, temporary planning permission granted	Appeal allowed, temporary planning permission granted
5 & 6	C/18/3215159, C/18/3215160 W/18/3204582	Appeals allowed, enforcement notice corrected and quashed, temporary planning permissions granted	Appeal allowed, temporary planning permission granted
7	C/18/3215161	Appeal dismissed, enforcement notice as corrected and varied upheld	
8, 9 & 10	C/18/3215162, C/18/3215163 W/18/3204586	Temporary planning permission granted for part of the land, enforcement as corrected and varied upheld	Appeal dismissed
11	C/18/3215164	Appeal dismissed, enforcement notice as corrected and varied upheld	
21A	C/18/3215165, 3215166, 3215167 W/18/3204590	Appeals allowed, enforcement notice as corrected quashed, planning permissions granted	Appeal allowed, planning permission granted
25 & 26	C/18/3215169 W/18/3204593	Enforcement notice quashed	Appeal dismissed
29	C/18/3215171	Appeal allowed, enforcement notice as corrected quashed, temporary planning permission granted	
30 30A	C/18/3215172	Enforcement notice quashed	
32	C/18/3215174	Appeal allowed, enforcement notice as corrected quashed, temporary planning	

		permission granted	
32B 32C	C/18/3215175 C/18/3215176 W/18/3204595	Enforcement notice quashed	Appeal allowed, temporary planning permission granted
33 & 34	C/18/3215177	Enforcement notice quashed	
38	W/19/3222126		Appeal allowed, planning permission granted
49	C/18/3215178 C/18/3215179 W/18/3204596	Appeals allowed, enforcement notice as corrected quashed and temporary planning permissions granted	Appeal allowed, temporary planning permission granted

Note: This summary is for information only and reference should be made to the Appeal Decision(s) for details.