



Appeal Decision

Site visit made on 10 August 2022

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/G2713/C/22/3295203

Broad Oak Farm, York Road, Sutton on the Forest, York YO61 1ER

- 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 Jack Plowman of Plowman Brothers Limited against an enforcement notice issued by Hambleton District Council.
- The enforcement notice was issued on 17 February 2022.
- The breach of planning control as alleged in the notice is the material change of use of the land to the siting of five static caravans for residential use as employees accommodation.
- The requirements of the notice are:
 - i. Cease the residential use of the land.
 - ii. Remove all the residential caravans from the land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (d)

1. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the material change of use of the land to the siting of five static caravans for residential use as employees accommodation had occurred ten years before the notice was issued; the material date therefore being 17 February 2012.
2. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
3. In his statement, the appellant states that at the time the enforcement notice was served four of the five caravans had been on the site since before September 2011. He intends to remove the fifth caravan by December 2022. The matters stated in the notice are specifically the siting of five static caravans on the land for residential purposes. Since the appellant's own evidence is that only four caravans have been on the site for the material

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

period, he has not provided sufficient evidence to meet the balance of probabilities test for all of those matters.

4. In any case, the aerial photographs submitted are inconclusive with respect to the five static caravans and appear to show caravans within the main commercial yard rather than the appeal site. There are some caravans in the background to some of the photographs, but their precise location is not clear. There is no firm evidence to demonstrate that the static caravans have been on their current site since 2012.
5. Furthermore, the Council's evidence contradicts the appellant's evidence with respect to the static caravans. Business rates data shows that the land in question has been classed as land used for storage and premises with rates paid accordingly since 1 November 2018. This aligns with evidence associated with planning permission reference 20/00315/FUL which was a retrospective application for the construction of a storage yard. When that permission was granted for the storage yard the appeal land was in use for B8 purposes as opposed to residential. Council tax records show that Council Tax has only been paid for two caravans.
6. Therefore, the appeal on ground (d) must fail in this case.

Formal Decision

7. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR