The Planning Inspectorate

Appeal Decision

Hearing Held on 14 June 2022
Site visit made on 14 June 2022

by Chris Preston BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/U2235/C/19/3239276
Land at Chestfields, Marley Road, Harrietsham, Maidstone ME17 1BS

- 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 Sonny Maughan against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice was issued on 17 September 2019.
- The breach of planning control as alleged in the notice is:
  On 5th August 2015, planning permission (14/504218/FULL) was granted by the Council for 'additional mobile home and day room and demolition of former piggeries', subject to conditions ("the Planning Permission").
  Condition number (2) of the Planning Permission requires that:-
  "No more than 3 caravans as defined in the Caravan Sites Act 1968 (of which no more than 2 shall be static caravans or mobile homes) shall be stationed on the site at any time".
  Condition number (8) of the Planning Permission requires that:-
  "The occupation of the site hereby permitted shall be carried out only by Ms Bridget Cash and her daughter Ms Eileen Purcell along with resident dependents and when the site ceases to be occupied by either Ms Bridget Cash or Eileen Purcell the use of the site as a Gypsy site shall cease and all the caravan, mobile homes and associated buildings removed and any hard surfaced areas broken up and the resulting materials, together with walls, fencing and equipment in association with the use brought onto the land shall be removed and the land restored to its former condition."

  It appears to the Council that the condition is now in breach because neither Bridget Cash nor Eileen Purcell or their relative dependants live on the site now known as Chestfields and three additional caravans have been stationed in excess of the two benefitting from planning permission 14/504218/FULL on the land shown hatched red within the redline of the attached plan.

- The requirements of the notice are:-
  (i) Cease the residential use of the caravans and remove them from the land within the hatched area of the red outline on the attached plan, including the three static caravans approximately indicated on the plan.
  (ii) Permanently remove all other structures associated with the residential use and the resultant material from the land, within the hatched area red outline on the attached plan.
  (iii) Remove hard surfacing, to be broken up and return the land to its previous condition and levels by ripping the ground in two directions, re-spreading topsoil over the land to a depth of 1500mm (or more where necessary) to fill in any depression and grading. The resulting materials, together with walls, fencing and gates separating the back section within the hatched area of the red outline plan
- The period for compliance with the requirements is six (6) months from the date the notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The enforcement notice relates to an alleged breach of two conditions of planning permission 14/504218/FULL, as described in the banner heading above. That permission, granted in 2015, was described as 'Additional mobile home and day room and demolition of former piggeries' (the 2015 permission). On its face, the description of development in that permission is somewhat unclear but there is no dispute between the parties that the 'additional mobile home' referred to was an additional unit over and above those approved under application 12/1518 which permitted the change of use of land for residence by a gypsy family including the stationing of one mobile home, one touring caravan, the use of a former stable building for ancillary purposes and associated works.

3. That permission was submitted under section 73 of the Town and Country Planning Act 1990 (the Act) to use the site as a caravan site for a gypsy family, without compliance with conditions previously imposed on permission granted under reference 09/1510. The 2015 permission was approved subject to a number of conditions, including conditions 2 and 8 referred to in the enforcement notice above which control the number of caravans that can be sited on the land and the people who may occupy those caravans, specifically Ms Bridget Cash and Ms Eileen Purcell and their resident dependants.

4. The site has since been subdivided internally. One side, where Ms Cash and Ms Purcell and their dependents are now resident is known as The Mellows and the other side, where additional caravans have been placed, is known as Chestfields. However, the application boundary of the 2015 permission encompasses both parts of the site and the associated conditions also cover both parts of the site.

5. Where an enforcement notice relating to a breach of condition is appealed on ground (a) the deemed planning application seeks permission for the development approved under the planning permission referred to without compliance with the relevant conditions referred to in the notice. The scope of such an appeal is therefore similar to an application made under section 73 or 73A of the Act. If I were to allow the appeal and grant planning permission, I would have the option of discharging the respective conditions, imposing varied conditions or adding new conditions as may be appropriate. Given that the original permission covers the whole of the site, including Chestfields and the Mellows, any permission granted would also relate to the whole site. Thus, any conditions that I were to impose would also relate not only to Chestfields but also the Mellows.

6. That becomes important when one looks at how the enforcement notice is framed. The 'Land to Which the Notice Relates' at section 2 identifies that the breach relates to '*Land at Chestfields, Marley Road, Harrietsham, Maidstone ME17 1BS, shown hatched in red within the red line area of the attached plan ("the Land")*'. Although the red line covers the whole of the site, the reference

to Chestfields within the description of the land covered by the breach and the use of the hatched area on the plan appears to make clear that the notice only relates to Chestfields and not The Mellows. Any reasonable reader would draw that conclusion. Whilst the notice was served on Ms Cash and Ms Purcell neither took any part in the appeal proceedings, perhaps in the belief that the proceedings would have no impact on their use of the site at The Mellows.

7. However, that is not the case. As discussed, any conditions would also apply to that part of the site. As an example, at the Hearing when considering the merits of ground (a) the question of whether a personal permission is necessary was discussed in relation to the breach of condition 8. Options could be to remove the condition altogether or to vary its terms. Either way, that would have a direct impact on Ms Purcell and Ms Cash and any of their dependents. Given that they took no part in proceedings it is not clear how those parties would feel about a removal of or relaxation of any personal permission.

8. Similarly, if I were to consider the appeal on ground (a), I would need to consider whether to discharge condition 2, which imposes a limit on the number of caravans that can be stationed across the site, as a whole, and whether to impose a new condition to limit numbers. Any such condition would apply across Chestfields and the Mellows, thereby affecting residents who took no part in the appeal proceedings.

9. In the discussion on any further conditions that may be appropriate if I were to allow the appeal on ground (a) the Council put forward conditions relating to additional landscaping and drainage works. Again, those would apply to the whole of the land identified in the original planning permission, across both parts of the site.

10. Having regard to the above, there is clear potential for injustice against residents residing at The Mellows if I were to proceed and determine the appeal and potentially discharge and/or add conditions that would directly affect them and how the site may be occupied, without having had the opportunity to hear their views on such matters.

11. In order to avoid that situation, the 'Land to Which the Notice Relates' should have been identified as the entirety of the land covered by the 2015 permission. Had that been the case, residents at The Mellows would have been alerted to the fact that the notice did, in fact, impact on the whole site and that it may have consequences for them.

12. I have considered whether I could correct the notice and the associated plan to make clear that it relates to the wider site. However, for the reasons set out above, given that the residents from The Mellows took no part in proceedings, there is clear opportunity for prejudice to arise if I were to take that course of action. Had the implications of the notice in relation to The Mellows been clearer, those residents may well have sought to make written representations or attend and contribute to the Hearing. That is not possible at this stage in proceedings.

13. In addition, section 5(i) requires that the residential use of units within the hatched area should cease and that caravans should be removed from the hatched area. However, residential occupation within the hatched area is permitted under terms of the 2015 permission. As described above, condition

2 limits the number of caravans that can be stationed across the site and condition 8 is a personal permission which limits occupation to named individuals and their dependents. Neither condition limits which part of the site caravans can be stationed upon. I understand that one unit, occupied by Ms Purcell and her dependents, was previously sited in the hatched area under the terms of the 2015 permission.

14. Consequently, in requiring all caravans to be permanently removed from the hatched area the requirement at 5(i) goes beyond what is required to remedy the breach of control. Moreover, there is no requirement within the notice to cease the stationing of more than 3 caravans on the site as a whole, nor is there a specific requirement to cease occupation by residents other than those named in condition 8. The only requirement is to remove caravans from the hatched area. That opens the question of what the situation would be if those caravans were moved from the hatched area onto another part of the site covered by the 2015 permission. On the face of it that would be sufficient to comply with the terms of 5(i) and the requirement would not necessarily remedy the breach. It is not for me to answer that question here but the current requirement results in a lack of clarity as to precisely what is required to remedy the breach.

15. The parties accepted that the requirement was less than clear in that respect and the Council accepted that the wording would be clearer if the requirements of the notice directly corresponded to the alleged breach of control. In other words, where condition 2 places a restriction on the number of caravans that can be stationed at the site, the corresponding requirement would be to remove any caravans above that number from the land as a whole. Where condition 8 limits occupation to named individuals and their dependents the corresponding requirement would be to cease occupation by anyone other than those falling within that condition.

16. However, if I were to make amendments to the notice to that effect, the same issue as identified above would arise. In removing reference to the hatched area and widening the description of the land to which the notice relates to the site as a whole, the implications would directly impact upon those residing at The Mellows. There would be clear potential for injustice if I were to vary the requirements due to the fact that residents living at The Mellows took no part in proceedings.

17. In view of the above, I find that the enforcement notice is invalid on account of the failure to properly identify the land affected by the notice which should properly have encompassed the entirety of the land covered by the 2015 permission. The failure to do so has led to confusion over the implications of the breach and confusion within the associated requirements. I am unable to correct the notice and the associated plan without causing injustice to residents of The Mellows who would clearly be affected.

18. As discussed at the event there are also other problems in terms of the way the notice is drafted. Section 5(ii) requires that all other structures associated with the residential use in the hatched area, and associated material, be permanently removed from the land. However, it appears that some of those structures, specifically the day room, benefit from planning permission.

19. Similarly, section 5(iii) requires all hard surfacing to be broken up and removed and the land returned to its former condition. However, the evidence before

me indicates that a proportion of the land was hard surfaced prior to the breach of conditions 2 & 8, given that the land has a history of use as a caravan site, dating back a number of years. When questioned at the Hearing the Council could not identify which part of the hardstanding was associated with the pre-existing use and which part may have been installed to facilitate the additional caravans that are now present. It would not be valid for a notice to require the removal of surfacing that was lawfully in situ and did not facilitate the breach of control.

20. The Council did suggest that the requirements could be varied in order to delete 5(ii) and 5(iii). Given that planning permission has been granted for the dayroom I am satisfied that the requirement 5(ii) could be deleted without prejudice. The deletion of 5(iii) would be less onerous on the appellants than the present requirements and there would be no prejudice to the main parties if I was to correct the notice and delete 5(ii) and 5(iii).

21. However, overall, there are significant deficiencies in the enforcement notice as described above. The issue relating to the correct identification of the land affected is, of itself, enough to consider the notice invalid given that the alleged breach of condition has clear consequences outside of the hatched area identified on the plan and described in the notice. There is clear potential for injustice to residents of The Mellows if I were to correct the notice and associated plan. The way in which the requirement at section 5(i) is framed also leads to some confusion and substantial redrafting of the requirements would be needed to resolve that matter. For the reasons set out, I am not satisfied that could be achieved without causing injustice to interested parties.

22. As such, it is not open to me to correct the identified 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) 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.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Woods – WS Planning & Architecture	Agent
Mr Sonny Maughan	Appellant
Mr Patrick Maughan	Relative of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Sue King	Enforcement Team Leader