



Appeal Decisions

Site visit made on 10 October 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal A Ref: APP/F2415/C/22/3295125

Appeal B Ref: APP/F2415/C/22/3295126

Land north of Green Lane, Owston, Leicestershire, LE15 8DX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Miss Vicky Christian and Appeal B by Mr Stephen Christian against an enforcement notice issued by Harborough District Council.
 - The notice, numbered EN652, was issued on 28 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agriculture to the stationing of a mobile home/caravan and associated structures for residential purposes in the approximate location hatched black on the plan.
 - The requirements of the notice are to: i. cease all residential use on the land; ii. remove from the land the mobile home/caravan and associated structures including the awning, sheds and patio area.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Both Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The appeals on ground (a) were withdrawn by the appellants on 18 March 2022 and ground (d) was substituted. Since the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed. The consequence of this is that, in the determination of this appeal, I am unable to take into account the planning merits of the case. I have seen a number of letters of support for the appellants from local residents, pointing to their contribution to the local community. However, I can give little weight to these because they do not relate directly to the only grounds of appeal which are now in place.

The appeals on ground (b)

3. This ground is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, I saw during my site visit that there is plainly a mobile home/caravan on site, used for residential purposes. Whether it is there lawfully or not is not relevant to this ground of appeal. Accordingly, the appeals on ground (b) fail.

The appeals on ground (c)

4. This ground is that there has not been a breach of planning control. However, the siting of a caravan for residential purposes on this plot of agricultural land amounts to a material change of use that falls within the definition of development, as defined in S.55 of the Act, and would have required planning permission. No such permission was obtained and therefore there has been a breach of planning control. The appeals on ground (c) fail.

The appeals on ground (d)

5. This ground is that, at the time the notice was issued, it was too late to take enforcement action. On this ground, the onus is on the appellants to demonstrate, on the balance of probability, that there has been a continuous breach of planning control for a period of 10 years prior to 28 January 2022.
6. The appeal site comprises a small area of rural land to the north of the hamlet of Owston. There are two long-standing agricultural buildings on site which are unaffected by the enforcement notice. The appellants' residential occupation of the site appears to date from 2019, when the present residential touring caravan and awning were sited on the land, together with a smaller caravan used for storage purposes. This is confirmed in the Planning Contravention Notice (PCN) completed by the land owner, Mr Riley, on 25 September 2020
7. The appellants claim that the land has been in use for the siting of a residential caravan since 1990. The series of aerial photos submitted appears to confirm the presence on site of a static caravan from at least 1999; what remains of this caravan is still on site. In the PCN, Mr Riley makes reference to this in stating "I used to stay in big van since 1990 till water leak on and off". However, this statement lacks the precision to adequately describe the use of the caravan. Moreover, it is written in the context of his providing background information indicating that there had been break-ins and theft and appears to indicate his "on and off" occupation was in response to this. There is nothing in the PCN, or elsewhere before me in evidence, to indicate the caravan was used continuously as his residence for a significant period of time at all, let alone as a part of the 10 year period that the appellants need to demonstrate.
8. Furthermore, the static caravan which remains on site is in an extremely dilapidated state. It is not water-tight and does not appear to have been useable, or used, for a very considerable period of time.
9. In conclusion, the appellants appear to have had no personal experience of the site prior to 2019; there is no indication otherwise in their submissions. The only other evidence relating to the pre-2019 period is the PCN response by Mr Riley. However, whilst it is clear that the present static caravan has been on site for many years, Mr Riley has provided no evidence that it was used as a dwelling, continuously, over a 10 year period. He appears to have resided elsewhere and his only occupation was described as "on and off". Other than the brief comments of Mr Riley, there is no witness statement relating to, or other independent corroboration of, the residential occupation of the site.
10. Accordingly, the appellants have failed to demonstrate a continuous breach of planning control for a 10 year period and the appeal on ground (d) must fail.

The appeals on ground (f)

11. The Council has indicated that the purpose of the notice is to remedy the breach of planning control. The requirements to cease all residential use on the land and to remove the mobile home/caravan and associated structures including the awning, sheds and patio area appear to be no more than is needed to remedy the breach. As indicated above, the large, agricultural sheds are untouched by the notice.
12. The appellants claim that the requirement to remove from the land the mobile home/caravan is not clear as there are 3 caravans currently sited on the land. However, reading the notice as a whole, the allegation is the stationing of a mobile home/caravan and associated structures for residential purposes. There is only one mobile home/caravan on site that could reasonably be interpreted as fitting that description. The smaller caravan is in use for the storage of tack and other equestrian equipment and the large static caravan is in such an advanced state of disrepair and incapable of residential use that it could not now reasonably be interpreted as the mobile home in question.
13. The appeals on ground (f) fail.

Conclusion

14. The appellants have questioned the expediency of the Council's taking enforcement action. Whilst planning enforcement is discretionary, the decision to issue an enforcement notice is a matter for the Council's own judgement.
15. For the reasons given above, I conclude that the appeals should not succeed.

B S Rogers

INSPECTOR