



Appeal Decision

Site visit made on 28 September 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/Z4718/C/22/3296605

Land and property adjacent to The Edge Accommodation, Longwood Edge Road, Longwood, Huddersfield HD3 4XN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by John Richard Whitworth against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 3 March 2022.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, the material change of use of the land to residential purposes, facilitated by the conversion and alterations of the former livestock building to form a residential dwelling, the siting of two caravans and the formation of raised platform veranda to facilitate the residential use.
 - The requirements of the notice are:
 - (a) Cease the use of the site for residential purposes.
 - (b) Dismantle and permanently remove from the site the building and raised platform/veranda and all residential paraphernalia.
 - (c) Permanently remove the caravans.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (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 and varied by:
 - i) Adding '(for residential use)' after the word 'caravans' in section 3 of the notice (The matters which appear to constitute the breach of planning control);
 - ii) Delete all wording at section 6 of the notice (Time for compliance) and replace it with '9 months after this notice takes effect'.
2. Subject to the correction and variation, 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.

Preliminary Matters

The notice

3. The appellant advises that the caravan sited at the south-eastern end of the site was occupied by his carer, Mr Wood. When I visited the site, that caravan had been removed. There is, however, no dispute that it was on the site when the notice was issued. I looked inside the remaining caravan and saw that it appeared to be in use as a dwelling. The appellant advises that he previously occupied this caravan while carrying out the conversion of the former livestock building and it is now occupied by Mr Wood. It is therefore clear that both caravans have been in residential use and the remaining caravan continues to be so.
4. The courts have established that an allegation relating to the siting of a caravan must set out what the caravan is being used for. In this instance, the notice does not specifically state that the caravans were being occupied. However, it explains that the siting of the caravans facilitates the residential use of the site.
5. There does not appear to be any uncertainty on the part of either the appellant or the Council regarding the use of the caravans. Nevertheless, I consider that the notice could be usefully clarified by adding '(for residential use)' after the reference to the caravans in the allegation. This would not change the substance of the notice or either party's understanding of it. Consequently, no injustice would arise and I will correct the notice along those lines.
6. Following my site visit I wrote to the parties seeking views on the requirement to remove the converted livestock building in its entirety, given the fact that the livestock building had existed lawfully on the site prior to its conversion. In responding, the Council referred to the converted building as 'an entirely new building'. However, the notice refers to it as a converted building and that is consistent with the appearance of the building, all the previous statements from the Council and also with the appellant's case. Consequently, I am satisfied that the reference in the notice to 'the conversion and alterations of the former livestock building' is correct.

Estoppel and legitimate expectation

7. The appellant says he was previously encouraged by a planning officer to make a planning application¹ to convert the livestock building to a dwelling. This, it is said, meant that he had a legitimate expectation that planning permission would be granted for the development. It is argued that the doctrine of estoppel applies and that the enforcement notice was unlawful as a result. For its part, the Council argues that the notion of Estoppel in planning law was brought to an end by the judgement in *R v E Sussex CC ex parte Reprotech (Pebsham) Ltd [2002] UKHL 8*.
8. But regardless of that, on the facts of this case, the basic conditions for a finding of legitimate expectation or estoppel do not apply. Any views expressed by the planning officer were clearly not a decision of the Council and could not be binding on it. This was made clear to the appellant in an email prior to the application being made, which said 'As you know, any advice I give is without

¹ Ref 2018/91573/W

prejudice to a planning application and I cannot guarantee the outcome, and at the moment the prospects of an approval are by no means assured’.

9. Moreover, the development proposed in the planning application was materially different to the development targeted by the enforcement notice, and did not include the caravans. In any event, planning permission for that development was refused and a subsequent appeal dismissed in 2019. Thus, the appellant cannot have been under the impression that the Council was supportive of residential use of this site and carried out the development at his own risk. Accordingly, I am not persuaded that the notice was unlawfully issued.
10. I have noted the appellant’s comments regarding attempts to engage with the Council, but have no evidence to show that the Council has acted in any way that has any bearing on procedural issues or the matters before me.

Ground (d)

11. To succeed on ground (d) the appellant must demonstrate, on the balance of probability, that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control stated in the notice.
12. The timeframes for taking enforcement action are set out at s171B of the Act. In accordance with s171B(1) and (2), the time limits relating to building operations or the change of use of any building to use as a single dwellinghouse is 4 years from the substantial completion of the operations or the change of use. In accordance with s171B(3), for any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
13. The appellant says that it was too late to take enforcement action against one of the caravans when the notice was issued. The use of the land for the siting of the caravan is not development falling within the scope of s171B(1) or s171B(2). Accordingly, the 10 year period that is applicable to ‘any other breach of planning control’ referred to in s171B(3) applies.
14. The appellant refers to the caravan being occupied since 2015. That is less than 10 years prior to the enforcement notice being issued. In any event, the caravan was originally located on neighbouring land associated with ‘The Edge’ guesthouse, which was previously owned by the appellant. Although close to the appeal site, that land is in separate ownership, separate occupation, in a different use as a guest house, and is consequently not within the same ‘planning unit’ as the appeal property. Consequently, the use of the caravan for residential purposes on that land has no bearing on lawfulness in relation to the appeal site. Since it appears that it remained on the adjacent site until around February 2020, it follows that it cannot have been in residential use on the appeal site for a sufficient period to establish lawfulness. Consequently, the Council was not too late to take enforcement action when the notice was issued in March 2022.
15. The appellant has confirmed that the works to the livestock building were substantially completed in 2020. Plainly, this was within the relevant 4 year timeframe and it was not too late for the Council to take enforcement action. The fact that the livestock building was originally constructed with planning permission about 20 years ago does not alter the fact that its conversion to

residential use required planning permission and took place less than 4 years before the notice was issued.

16. I have no evidence to suggest that any other element of the unauthorised development has gained immunity from enforcement action due to the passage of time. More general planning considerations, such as other developments in the locality or the extent to which the appeal site can be seen, are not relevant to the appeal on ground (d).

17. For these reasons, the appeal on ground (d) fails.

Ground (a)

Main issues

18. The main issues are:

- The effect of the development on the character and appearance of the area and whether it undermines the Council's policy towards the protection of Urban Green Space;
- Whether the development includes adequate biodiversity enhancements, in accordance with local and national planning policy; and
- Whether any harm arising from the development is outweighed by the appellant's personal circumstances and any need for the development.

Open space, character and appearance

19. The appeal site is allocated within the Kirklees Local Plan as Urban Green Space. Local Plan Policy LP61 only permits development proposals which would result in the loss of Urban Green Space in certain, specified circumstances, including where replacement green space is provided. The supporting text for the policy says:

'Some open spaces in Kirklees have been designated as urban green space for purposes other than sport and recreation and may not have public access. These include urban green spaces important for their visual amenity, landscape and biodiversity benefits which close to where people live can help promote the health and well-being of local residents and contribute significantly to the quality and local character of the built-up areas in Kirklees. In order to safeguard these sites, development proposals will not be permitted which would be harmful to these qualities or the function of the urban green space.'

20. It is therefore important to consider the effect of the development on the quality and local character of the area.

21. Longwood Edge Road is a loose-surfaced byway. It runs close to the edge of a former quarry and the appeal site is situated on a fairly narrow strip of land between the road and the cliff edge. Next to the appeal site is 'The Edge', a guest house which was undergoing renovation when I visited the site. To the other side is a small caravan site, within the appellant's control. On the opposite side of the road are extensive college playing fields, beyond which the college buildings can be seen. The fields are in clear view through the boundary fencing and add to the openness of the area. The elevated position of the appeal site means that it has a sense of separateness in relation to the more built up area on the lower land to the southwest. Thus, this section of

Longwood Edge Road has a semi-rural character, enhanced by the extensive views across the wider landscape. This character is important to its value as Urban Green Space.

22. I have been provided with images of the site before the unauthorised development took place. A StreetView image from 2019 shows a simple wooden building within a small field, apparently in agricultural use. The building is set back from the road and appears typical of the kind of small agricultural building to be found in a rural area. An aerial image from 2018 shows the site to be fundamentally free from other built development, apart from the stone boundary wall.
23. The contrast with the current appearance is stark. The conversion works to the building have plainly included a substantial extension, so that it is now a far larger structure, positioned just behind the front boundary wall. The building is still finished in timber, but a range of windows means that it has lost its simple agricultural character.
24. The remainder of the site has also changed substantially. A large residential caravan is located close to the converted building, and another caravan was located to the other side when the notice was issued. The surface is now a mix of mown grass and gravel. To the rear of the building is a substantial area of decking, complete with tables and chairs. The decking overhangs the cliff edge to the rear, being supported on props. The site as a whole contains a range of domestic items such as a washing line, external lighting, and a garden shed.
25. With the above points in mind, and despite the somewhat rustic appearance of the converted building, the residential use of the site is very obvious. This has harmed the character of this area of Urban Green Space, giving the area a more built-up character and interrupting the extensive views afforded by Longwood Edge Road. The site, including the converted building and the caravan, is highly prominent from Longwood Edge Road. Thus, the development has harmed the qualities and function of this area of Urban Green Space. The caravan can also be seen from the residential road Quarry Court, although the substantial difference in levels means that the converted building is not visible from there.
26. The appellant advises that he has 5 acres of land and is willing to consider proposals to increase public access to it. The appellant suggests that he could create a dog exercise and training area on his land for use by the public. Another suggestion is using his land for alpaca trekking. However, I do not know if there is any demand for such uses, there are no specific proposals before me and I do not see how the appeal development would facilitate them anyway. Consequently, I do not regard these suggestions as a benefit of this development. Thus, the appellant's suggestions do not amount to 'replacement open space' for the purposes of Policy LP61.
27. For these reasons I conclude that the development has harmed the character and appearance of the area and undermined the Council's policy towards the protection of Urban Green Space. Consequently, there is conflict with Policy LP61. There is conflict too with Policy LP24, which requires that the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.

Biodiversity

28. The enforcement notice says that the development is within a Wildlife Habitat Network and has not incorporated biodiversity enhancements, mitigation or compensatory measures, contrary to Local Plan Policy LP30. However, this has not been expanded upon, and it is not clear what measures the Council would have wished to see. The appellant is apparently willing to implement biodiversity enhancements if required and such matters could potentially have been the subject of planning conditions were I minded to allow the appeal and grant planning permission. Accordingly, on the very limited evidence before me, I find no conflict with Policy LP30.

Personal circumstances and need

29. The converted livestock building and the remaining caravan provide homes for the appellant and one other person. Thus, upholding the notice would lead to the loss of homes for two people.

30. The appellant says that there is a shortage of suitable housing locally that would meet his needs, a view the Council has not challenged. The appellant considers that he has no reasonable prospect of finding or funding private rented accommodation and would need to be housed at the expense of the local authority. This would create a cost to the public purse, as well as being at odds with the appellant's wishes. Furthermore, the appellant advises that he would need to sell his assets on the site to fund the requirements of the notice.

31. The appellant is elderly and has set out a range of health issues. There is some medical evidence to support this, although not for all the matters identified. That said, the appellant's claims are not disputed by the Council. Age and health are 'protected characteristics' for the purposes of the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, and I have had due regard to the aims of the PSED in determining the appeal. I return to this later.

32. Drawing the above together, there is clearly a benefit for the appellant and the other occupier of the site in retaining their current homes. However, I also consider that the impact on those concerned will depend to a significant degree on the time allowed for compliance with the notice, a matter I consider further in relation to the ground (g) appeal. Nevertheless, the appellant's circumstances and the need for the development are important considerations to which I attach significant weight.

Other considerations

33. Both parties refer to the appeal decision relating to the previous proposal to convert the building². That inspector's view that the living accommodation that the scheme would provide was satisfactory has no bearing on the different matter of the effect of this current development on the character and appearance of the area.

34. The appellant compares this development with recently-built commercial units occupied by Jaguar Landrover and Lesjofors. However, those are entirely different developments, some distance from the appeal property. I do not have full details of the circumstances of the grant of planning permission for those

² APP/Z4718/W/19/3231485

developments and it has not been shown that the Council has been inconsistent in its decision-making. The buildings on the nearby college playing fields are not comparable to this development either and may well be subject to different planning policy considerations.

35. The adjacent guest house – ‘The Edge’ - was converted from a former agricultural building to a dwelling following the grant of planning permission in 1999. I understand that planning permission was granted to use the property as a guest house in around 2016. The property has been extended and the external materials changed. This property is relevant in that it affects the setting of the appeal site and has established a residential/commercial use on this section of Longwood Edge Road. However, it is a very different development to the appeal scheme and the information before me does not show that the Council has been inconsistent in its approach.
36. I understand that the occupiers of the appeal site pay Council Tax, but that does not justify this development, contrary to local policies. Nor is it justified on crime or security grounds. I have considered whether the harm arising from the development could be overcome with planning conditions, but conclude that it could not.
37. I have noted the matters raised by the appellant in relation to a (now-withdrawn) enforcement notice relating to the deposit and storage of waste materials on his land, but those matters do not alter my assessment of this development. The information before me does not show that the Council has been discriminatory or inconsistent in any way that affects the validity of the notice.
38. The appellant argues that the planning inspector who considered his previous appeal misunderstood the nature of the proposal and the area, but that has no bearing on my assessment of the different development before me.

Conclusion – ground (a)

39. While I have not found harm or policy conflict in respect of biodiversity, the harm I have found and the conflict with other policies leads me to conclude that there is conflict with the development plan as a whole. Having considered all matters raised in support of the development, and having due regard to the need for the development and the personal circumstances raised, I conclude that the harm I have found is not outweighed.
40. I have no doubt of the important implications of upholding the notice for both occupiers of the site. Loss of their homes would represent a serious interference with their right to respect for their private and family lives and homes in accordance with Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998.
41. However, that is a qualified right. The interference in this case is in accordance with the law, given the provisions of the Town and Country Planning Act 1990. While the notice would result in two people losing their current homes, that must be weighed against the public interest of ensuring the proper planning of the locality. I cannot see that the legitimate planning aim of protecting Urban Green Space and the character and appearance of the area in accordance with established local policy could be achieved by any other means which would cause less interference with their rights under Article 8. In my judgement, and

bearing in mind also my decision in relation to the ground (g) appeal, dismissal of the ground (a) appeal is a necessary and proportionate response, and would not result in any violation of the rights of the individuals concerned.

42. I have had due regard to the aims set out in the PSED of eliminating discrimination, victimisation or harassment against persons with protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. Nevertheless, for the reasons explained above, I conclude that the enforcement notice is a proportionate response to the breach of planning control, subject to the changes I shall make to it.
43. For these reasons, I conclude that planning permission should not be granted and the appeal on ground (a) therefore fails.

Ground (f)

44. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the cessation of the residential use of the site and the complete removal of relevant items. The Council advises that the purpose of the notice is to remedy the breach of planning control in accordance with s174(4)(a). The appellant has not put forward any specific alternative measures to achieve that purpose.
45. The wooden dwelling on the site was apparently created by converting a livestock building. This raises the possibility of remedying the breach of planning control by requiring the building to be returned to its former condition (and use) rather than requiring its removal. I raised this matter with the parties.
46. However, the extent of the works to convert the building has evidently been substantial. The building has been substantially extended and it is difficult to be sure what remains of the original structure. Indeed, the Council considers that it may not be possible to reverse the works to the building and return it to its condition prior to the breach taking place. I accept that view. From the information before me (including the 2018 structural inspection report) and my inspection of the property it appears likely that recreating the pre-existing building could involve a large degree of reconstruction. In these circumstances, and in the absence of any clear suggestions from the appellant regarding alternative requirements for the building, I conclude that its removal is the only practical way of securing the purposes of the notice and is not, therefore, excessive.
47. All the other requirements set out in the notice are consistent with the purpose of remedying the breach of planning control and are not, therefore, excessive. Although the appellant would like to discuss the matter further with the Council, that does not alter my view that the requirements of the notice are not excessive. Consequently, the appeal on ground (f) fails.

Ground (g)

48. The notice allows just 60 days for compliance. Within that time, the residential use must cease, various structures be dismantled and removed and a caravan

removed as well. In my view that is an inadequate period. Significant additional time is needed to allow the appellant to make arrangements for the demolition work and the removal of items from the site and to allow time to look for alternative accommodation.

49. The appellant has not suggested a specific alternative period of time for compliance with the notice. In considering the time needed, I am mindful of the age and health matters drawn to my attention. On the other hand, there is the desirability of remedying the breach of planning control without undue delay. In my judgement, 9 months would achieve an appropriate balance and amount to a proportionate response to the breach that has occurred.
50. While the appellant has been aware of the breach of planning control for some time, he appealed the notice on a number of grounds. As a consequence, the notice might have been quashed or its requirements varied, and he could not be expected to make arrangements for matters yet to be determined. Consequently, the period prior to the notice taking effect is not relevant.
51. The appeal on ground (g) therefore succeeds and I will vary the notice to specify a 9 month compliance period.

Peter Willows

INSPECTOR