



Appeal Decision

Site visit made on 8 November 2022

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Appeal Ref: APP/Z2505/C/19/3228336

Land at Red House Farm, 58 Marsh Road, Sutterton, Lincolnshire PE20 2LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Rosalind Helen Reynolds against an enforcement notice issued by Boston Borough Council.
- The notice was issued on 11 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, the use of a static caravan situated immediately to the rear of the dwellinghouse, shown hatched blue on the plan, to provide an independent unit of residential accommodation (Class C3 of the Town and Country Planning (Use Classes) Order 1987).
- The requirements of the notice are to cease the use of the static caravan for residential occupation.
- The period for compliance with the requirement is 28 days.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice shall be corrected by:

In section 3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all words and the substitution of the words 'Without planning permission, the material change of use of land to the siting of a static caravan for human habitation.'

And varied by:

In section 5 WHAT YOU ARE REQUIRED TO DO, the deletion of all the words and substitution of the words 'Cease the use of the static caravan for human habitation'.

Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

Matters Concerning the Enforcement Notice

2. It is the material change of use of land that amounts to development for the purposes of section 55 of the 1990 Act. This should be made clear in the allegation. Furthermore, Class C3: Dwellinghouses relates to use of a building, or part thereof. A static caravan is not a building, or part of a building, and therefore Class C3 is not relevant. Reference to Class C3 shall be deleted from the allegation. The siting of a static caravan is a use of land and, depending on the use the static caravan is being put to, its siting may represent a material change of use of the land.
3. The allegation does not therefore accurately describe the development that has occurred. The allegation set out in the notice shall be replaced with the words

"the siting of a static caravan for human habitation". No injustice would arise as the thrust of the allegation remains the same.

4. While there is no appeal on ground (f), the requirements of the notice should reflect the matters alleged. The breach of planning control is not the static caravan's residential occupation, but its use for human habitation. The requirement shall be varied to reflect this.
5. I shall proceed on the basis of the corrected and varied notice.

Preliminary Matters

6. The appellant challenged the previous decision, issued by The Planning Inspectorate on 11 June 2020. The sealed Consent Order dated 20 July 2022 states that the Secretary of State, as First Respondent, accepts that the case management timetable was varied, and their decision was issued without allowing the appellant to make representations to the appeal. For this reason, the First Respondent agrees that the previous Decision should be remitted for redetermination.
7. Further to the quashing of the original decision, the appellant and Council were notified of a new case management timetable. The appellant maintains that they did not receive notification of the new timetable. Following the accompanied site visit, the appellant was afforded a further period to submit representations and the Council was provided an opportunity to comment on those representations.

Reasons

8. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of the corrected breach of planning control. The relevant time period for achieving immunity from enforcement action for a material change of use of the land is 10 years. It is for the appellant to show, on the balance of probability, that the human habitation of the static caravan began on or before 11 April 2009. Any 10-year period is relevant.
9. The appellant's initial written submissions claim that the caravan was originally sited in 2007, when works were carried out on the dwelling. When those works were completed, the appellant says the static caravan was retained to allow someone to sleep in it. Both the appellant's and Mr Fletcher's written submissions claim that Mr Fletcher moved into the static caravan in 2007-2009 and he has lived there since.
10. The appellant's own evidence does not need to be corroborated by others to be accepted. The Council accepts that a static caravan has been sited on the land for longer than 10 years, but the evidence is unclear as to when the human habitation began. The period 2007-2009 straddles the material date and is therefore imprecise and ambiguous.
11. In response to the latest case management timetable, the appellant and Mr Fletcher have provided Statutory Declarations. Both Statutory Declarations go no further than confirming that Mr Steven Fletcher has lived in the static caravan since early to mid-June 2009. This date is after the material date and does not therefore show that the static caravan has been used for human habitation for at least 10 years.

Conclusion

12. For the reasons given above, the appellant has failed to show, on the balance of probability, that the use of the static caravan for human habitation has achieved immunity from enforcement action due to the passage of time. The appeal is dismissed.

M Madge

INSPECTOR