



Appeal Decision

Site visit made on 17 January 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/Z1510/C/21/3279849

Land at Fishing Lakes, Toppesfield Road, Great Yeldham, Essex CO9 4HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Hilton Valley Carp Fishery against an enforcement notice issued by Braintree District Council.
- The notice, numbered 20/00033/NCC3, was issued on 1 July 2021.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the land by the unlawful stationing of two mobile homes which are being used for residential purposes.
 2. The material change of use of the land by the unlawful siting of a portable outbuilding being used as a commercial kitchen to prepare takeaway food.
- The requirements of the notice are to:
 - a) Cease the use of the two mobile homes for residential purposes
 - b) Cease the use of the portable outbuilding as a commercial kitchen providing takeaway food
 - c) Remove from the land the two mobile homes
 - d) Remove from the land the portable outbuilding being used as a commercial kitchen
- The periods for compliance with the requirements are:
 - b) and d) to be completed within 1 Month from the date this notice takes effect
 - a) and c) to be completed within 6 Months from the date this notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the text within section 3 and the substitution of the following as the alleged breach:

'Without planning permission, the material change of use of the land to a mixed use of coarse fishery and the stationing of two mobile homes for residential purposes, including the siting of a portable outbuilding for use as a commercial kitchen to facilitate the mixed use'.
 - the deletion of the text within section 5 and the substitution of the following as the requirements of the notice:
 - a) Cease the mixed use of the site
 - b) Remove from the land the two mobile homes
 - c) Remove from the land the portable outbuilding being used as a commercial kitchen.

2. It is also directed that the enforcement notice be varied by the deletion of the text within section 6 and the substitution of 6 months as the time for compliance with the notice.
3. Subject to the corrections, 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

4. The appellant confirmed shortly after the submission of his appeal that he wished to also appeal on ground (g). This has been accepted by the Planning Inspectorate and I have determined the appeal on this basis.
5. The Council advised that since the notice was issued the Braintree District Local Plan (2022) (the Local Plan) has been adopted. Consequently, the Policies from the Braintree Local Plan Review (2005) and the Braintree District Core Strategy (2011) (the Core Strategy) which are quoted in the notice are no longer relevant.
6. The Council also confirmed that the Local Plan amalgamates the Braintree District Shared Strategic Section 1 Local Plan (2021) and the Braintree District Publication Draft Section 2 Local Plan (2017). Policies in these documents are also referred to in the notice and the Council has set out the changes to the policy references. I have used the updated policy numbers in my reasoning and conclusions below.
7. The appellant has had the opportunity to comment on the implications of the adoption of the Local Plan and he has confirmed that he has no comments to make.
8. The appellant submitted a planning application for the retention of 2 x caravan units for use as a temporary dwelling for fishery manager and proposed fish hatchery following the notice being issued (Council Ref. 21/02179/FUL) (the caravans and hatchery application). I understand that this application has been refused but an appeal against the Council's decision is not before me.

The Notice

9. On the basis of the submissions by the parties, I considered that the breach as set out in the notice was incorrect because it does not refer to a mixed use of the land to which the notice relates, and which is identified on the plan. I was able to confirm that this was the case at the site visit where it was evident that the land includes the carp fishery ponds, footpaths and fishing points.
10. The evidence points to a functional relationship between the occupation of the caravans and the operation of the fishery and establishes that the commercial kitchen serves the fishermen.
11. I have consulted the parties on potential changes to the allegation. The Council has confirmed that it is not seeking to tackle the use of the fishing lakes through the notice and the appellant refers to planning permission being granted which establishes the use of the fishing lakes for coarse fishing. In the event that I amend the notice to refer to a mixed use but subsequently dismiss the appeal under ground (a) and refuse the deemed planning application (DPA), this would not prevent any lawful use continuing on the land.

12. The appellant also agrees that a more accurate form of wording would be for the kitchen facility to be described as in association with the coarse fishery as opposed to a standalone takeaway facility. In this respect altering the notice to refer to the kitchen as facilitating the mixed use would address the appellant's point.
13. Drawing all of these points together, I find that the correction of the notice to refer to the mixed use together with the commercial kitchen is necessary to get the notice in order and would not cause injustice to either the appellant or the Council. Consequently, I shall correct the notice so that the allegation is as follows:

'Without planning permission, the material change of use of the land to a mixed use of coarse fishery and the stationing of two mobile homes for residential purposes, including the siting of a portable outbuilding for use as a commercial kitchen to facilitate the mixed use.'
14. The requirements of the notice should follow logically from the allegation. As I have corrected the allegation, I also need to make consequential corrections to the requirements of the notice to refer to the mixed use.
15. The correction of the allegation and the requirements also necessitate changes to the compliance periods. I have corrected the allegation to refer to the mixed use, but the periods for compliance with the notice as issued separate out the use of the mobile homes from the use of the portable outbuilding. This requires correction to relate to the mixed use and it seems reasonable to me to apply the longer of the two time periods to the mixed use and vary the compliance period to 6 months overall.

Ground (a) and the Deemed Planning Application (DPA)

16. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the DPA are derived from the allegation which in this case has been corrected to relate to the mixed use of the land.

Main Issues

17. The main issues are:
 - Whether, having regard to national planning policy that seeks to avoid isolated new homes in the countryside, there is an essential need for caravans to accommodate a rural worker on the site.
 - The effect of the mixed use on the character and appearance of the site and the surrounding area, with particular reference to the erection of an outbuilding for use as a commercial kitchen.
 - Whether the mixed use complies with national planning policy which seeks to steer new development away from areas at the highest risk of flooding, with particular reference to the location of the caravans and outbuilding for use as a commercial kitchen.

Reasons

Essential need for caravans for rural worker

18. There is no dispute between the parties that the site is located in the countryside outside any of the Council's identified town or village boundaries. Policy LPP 1 of the Local Plan sets out that development will be strictly controlled to uses which are appropriate to the countryside to protect its intrinsic character and beauty. This policy is in accordance with the National Planning Policy Framework (the Framework).
19. The appellant argues that the caravans are essential for him and his family to manage the coarse fishery. Policy LPP 38 of the Local Plan sets out criteria for the assessment of rural workers dwellings in the countryside. In its assessment against these criteria the Council, whilst accepting that a full-time worker may be necessary to oversee the coarse fishery, considered that the need for a worker to live on the site was not justified.
20. The appellant has provided a Manager's Accommodation Appraisal (MAA) which provides an appraisal of the need for a temporary manager's dwelling at the fishery. The MAA concludes temporary accommodation is essential for the future development and management of the coarse fishery. However, that conclusion is heavily reliant on the development of an on-site fish rearing unit/hatchery.
21. The proposed hatchery does not form part of the DPA which is before me, and planning permission has not been granted for it following the submission of the caravans and hatchery application to the Council. Therefore, I am unable to take the requirements for an on-site manager into account where those requirements relate to the operation of the hatchery. Similarly, the site does not include the stock ponds and the requirements for on-site supervision of these facilities are not relevant to this appeal.
22. The MAA also refers to the potential for theft of fish as justification for a temporary dwelling on the site and draws attention to such activities taking place at night. However, there is also reference to the potential use of security systems, which whilst intrusive for legitimate fishermen have been suggested as an alternative.
23. There is limited information before me regarding the profitability of the coarse fishery. However, in such circumstances Policy LPP 38 allows for consideration of a temporary permission for up to 3 years where there is clear evidence of an intention to develop the enterprise and that the enterprise has been planned on a sound financial basis. In this case there is evidence that the appellant has and intends to develop his business. Nevertheless, this does not address the lack of a clearly established functional need for the fishery manager to live on the site.
24. I conclude that there is not an essential need for caravans to accommodate a rural worker on the site. The development is therefore contrary to Policy LPP 1 of the Local Plan because the siting of the caravans in the countryside has not been justified.

Character and Appearance

25. The Council's concerns relate only to the impact of the outbuilding in conjunction with what it describes as the 'existing mobile units'. Policy LPP 67 of the Local Plan recognises the intrinsic character and beauty of the countryside and Policy LPP 52 seeks a high standard of layout and design in all developments.
26. The site is accessed off Toppesfield Road via a track which is included in the site. As a result of the topography and existing planting the caravans and the portable outbuilding are not readily visible from the road. Within the site itself the outbuilding is positioned close to some existing structures. The portable outbuilding is of a utilitarian design and is finished in the same colour treatment as the adjacent mobile units. As such it reads as part of the cluster of units and is not prominent within the site.
27. The introduction of the portable outbuilding leads to an expansion of the footprint of mobile/portable units on the site. However, it does not have a harmful effect on the appearance of the site and the contribution which the site makes to the character of the surrounding countryside.
28. I conclude that with particular reference to the outbuilding, the mixed use does not have a harmful effect on the character and appearance of the site and the surrounding area. The development is therefore in accordance with Policies LPP 52 and LPP 67 of the Local Plan.

Flood risk

29. There is no dispute between the parties that when the notice was served the caravans were in Flood Zone 3 which is a high probability of flooding zone.
30. The appellant produced a Flood Risk Assessment (FRA) in support of his application for the caravans and hatchery. The FRA has been provided as part of his submissions for this appeal. The Council refers to its consultation with the Environment Agency (EA) as part of its consideration of the planning application and has provided a copy of the EA response.
31. Setting aside the references to the fish hatchery in the FRA and the EA response, which is not relevant to this appeal, it is clear that the EA consider that the FRA does not provide a suitable basis for the assessment of flood risk.
32. An updated FRA is not before me, and the appellant says that the Council's concerns have been addressed in his application for the caravans and hatchery by the location of the caravans and the hatchery into Flood Zone 1. However, there is no information before me to confirm that the EA and ultimately the Council finds this to be a satisfactory solution.
33. Furthermore, on the basis of my site visit it is not clear whether the caravans have already been moved into Flood Zone 1 or if they remain in Flood Zone 3.
34. In the event that additional information were provided and the EA objection withdrawn a planning condition to secure the relocation of the caravans may have been an appropriate way forward. However, given the lack of certainty regarding whether moving the caravans out of Flood Zone 3 and into Flood Zone 1 would address the potential for flood risk, I do not consider that this

matter could be addressed by the imposition of a planning condition in this case.

35. Drawing all of these points together, I conclude that the mixed use does not comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Furthermore, the development is contrary to Policy LPP 74 of the Local Plan which requires that all development is located to avoid the risk of flooding.

Other Matters

36. The appellant refers to the coarse fishery being a popular facility and that the business contributes to the local economy. He refers to the fact that the Council has granted planning permission for the enlargement of the lakes and the upgrading of infrastructure (Council Ref. 18/02165/FUL). I also note that the Council has confirmed that it is not attacking the coarse fishery use through the notice and accepts that this use is lawful.
37. The coarse fishery is an example of a rural enterprise which is generally supported by national and local planning policy. However, this does not preclude the mixed use being assessed against the development plan as a whole and in this regard, I have found that the mixed use of the land is contrary to other policies.

Conclusion

38. On two of the main issues in this appeal, I have found the development which is the subject of the notice as amended would be contrary to the relevant development plan policies. I have carefully considered all points raised, but there are no material considerations in this case which indicate a decision other than in accordance with the development plan.
39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (g)

40. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant has appealed on this ground, but he has not provided any evidence to show why he considers the compliance periods set out in the notice to be too short.
41. The Council considers that the compliance period of one month for the cessation of use of the outbuilding and its removal and six months for the cessation of use of the mobile homes and their removal is reasonable. In this respect the Council argues that there has been a history of breaches of planning control and that the appellant has carried out development in the full knowledge of the risk of enforcement action. It is the opinion of the Council that the appellant ought to have been preparing to relocate his family and seeking assistance from the Council's Housing Options Team.
42. However, the appellant is entitled to assume success on any ground of appeal. Therefore, the suggestion that the periods for compliance should not be

extended because the appellant had time during the appeal proceedings are not persuasive.

43. I have corrected the allegation to refer to the mixed use and made a consequential variation to the compliance period so that it is 6 months overall.
44. The Planning Contravention Notice which was completed by the appellant in April 2021 refers to him being the sole owner of the land and that he and three members of his family occupied the land. However, there is no further detail of the appellant's personal circumstances in either this or any other document before me.
45. Although if the appeal is dismissed and the notice is upheld, the appellant and his family may no longer be able to live on the site, it has not been shown that this would result in the loss of their home. For instance, they may have access to alternative accommodation. For this reason, it has not been demonstrated that dismissing the appeal will interfere with the rights of the appellant and his family under the Human Rights Act. Thus, the issue of proportionality does not come into play which could otherwise have provided grounds for extending the compliance period.
46. For the reasons set out above, I conclude that the periods for compliance with the notice do not fall short of what is reasonable, although I have varied the compliance period for other reasons. On that basis the appeal on ground (g) does not succeed.

Sarah Dyer

Inspector