



Appeal Decision

Site visit made on 30 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/L1765/C/21/3286358

Land to the north of Dradfield Lane, Soberton, Hampshire SO32 3QD

- 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 Nicholas Butler against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 8 October 2021.
- 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 a mixed use of agriculture and use for siting of a residential unit (namely a converted lorry trailer) including the construction of hardstanding to facilitate the residential use (which is shown marked with an "X" in the approximate position on the attached plan).
- The requirements of the notice are: 1) Cease the residential use of the Land; 2) Remove the converted trailer and any paraphernalia associated with the residential use from the Land; 3) Dig up and remove from the Land the hardstanding (which is shown marked in its approximate position with an "X" on the attached plan), the packaged sewage treatment plant and piping, and any materials or debris resulting from compliance with the requirements of this Notice; 4) Restore the Land to its former condition prior to the breach of planning control by laying topsoil and re-seeding to grass.
- The period for compliance with the requirements is: 1) Steps 1 and 2 – 6 months; 2) Steps 3 and 4 – 7 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Notice

1. The breach of planning control stated in the notice refers to 'use for siting of a residential unit'. The siting of a residential unit is not of itself a use of land, but instead describes the type of object that has been placed on the land without specifying the use to which it has been put. For the avoidance of doubt, I shall therefore correct the notice to refer to 'residential use for the siting of a residential unit'. I consider that I can make this correction without injustice since it is for clarity and neither party appears to be in any doubt as to the intention of the notice in this regard, particularly bearing in mind the reference in the requirements to 'residential use'.

The appeal on ground (b)

2. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The onus is on the appellant to make their case on the balance of probability.
3. The appellant submits effectively that the material change of use ('MCU') alleged in the notice has not occurred on the basis that the converted trailer is used for overnight accommodation in connection with the agricultural use of the land, rather than being in residential use. The appellant argues then that the hardstanding was installed in connection with the agricultural use, rather than facilitating a residential use. The appellant submits also that the hardstanding referenced in the notice was already found to be permitted development ('PD') pursuant to earlier appeal decisions¹.
4. The appellant submits no substantive evidence in support of their assertion that the converted trailer is used for overnight accommodation in connection with the agricultural use. Indeed, the appellant does not offer any explanation as to how overnight accommodation would be related to/required in connection with the ongoing agricultural use.
5. Whilst I was able to observe agricultural use occurring on the appeal site, residential paraphernalia around the converted trailer including a trampoline, barbecue and outdoor furniture point towards a residential use rather than overnight accommodation in connection with agricultural activities on the appeal site.
6. I find thus on the available evidence that the appellant has not made their case on the balance of probability that the trailer is not in residential use. It follows from this assessment that it is probable also that the hardstanding was not constructed to facilitate residential use.
7. Further, the hardstanding which is the subject of the present notice is not that which was indicated to be PD in the 2021 Appeal Decisions. The hardstanding which is referenced in the present enforcement notice sits alongside the northern boundary of the site whereas the hardstanding referenced in the 2021 Appeal Decisions was to the southern boundary.
8. The appeal on ground (b) fails.

The appeal on ground (c)

9. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. Again, the onus is firmly on the appellant to make their case on the balance of probability.
10. As regards the trailer, the appellant's position is that provided that this is not used for overnight accommodation, and is used as a day facility in connection with agricultural use, there is no breach of planning control. However, I found above that the residential use of the site has occurred on the balance of probability. On the evidence before me, I find as a matter of fact and degree that the mixed residential use represents a significant change in the character of activities on site in view of the more bustling level of activity and comings and goings associated with that residential use. It is therefore a MCU and a

¹ APP/L1765/C/20/3256531, APP/L1765/W/20/3263363 ('2021 Appeal Decisions')

breach of planning control. Whether or not a day facility would represent a breach is not relevant to my assessment under ground (c).

11. The appellant submits that the hardstanding and septic tank identified in the notice represent PD under Schedule 2, Part 6, Class B ('Class B') of the Town and Country Planning (General Permitted Development) (England) Order 2015.

12. Class B states that:

"The carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of— (a) the extension or alteration of an agricultural building; (b) the installation of additional or replacement plant or machinery; (c) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus; (d) the provision, rearrangement or replacement of a private way; (e) the provision of a hard surface; (f) the deposit of waste; or (g) the carrying out of any of the following operations in connection with fish farming, namely, repairing ponds and raceways; the installation of grading machinery, aeration equipment or flow meters and any associated channel; the dredging of ponds; and the replacement of tanks and nets" is PD, subject to the proviso that such development is "reasonably necessary for the purposes of agriculture within the unit".

13. I found under ground (b) that, on the available evidence, it is probable that the converted trailer is in residential use rather than in use for ancillary/incidental purposes in connection with the agricultural activities on site. As such, this represents a breach of planning control as a MCU of the land to mixed residential and agricultural use. It would appear that the hardstanding and sewage treatment plant have been installed to facilitate the residential use since these are located where the trailer has been sited. The appellant does not offer any detailed evidence or explanation as to how otherwise the hardstanding might be reasonably necessary for the purposes of agriculture within the unit.
14. The appellant again has not therefore made their case on the balance of probability and the ground (c) appeal accordingly fails.

The appeal on ground (f)

15. This ground of appeal is that the requirements of the notice exceed what is necessary.
16. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires ceasing the unauthorised residential use, removal of facilitating works and restoration of the land suggests that its purpose is to remedy the breach of planning control.
17. The appellant submits under this ground the breach of planning control can be addressed by simply requiring the appellant to stop sleeping in the trailer overnight and that this would address the alleged MCU to residential and agricultural use. However, since the trailer was, on the evidence before me, brought onto the appeal site for residential purposes, it is appropriate to

require its removal since leaving it on the land would invite further breaches of planning control.

18. As regards the hardstanding and sewage treatment plant referred to in the notice, these were part and parcel of and integral to the unauthorised use, and it is not clear that either could be provided as PD. It is therefore appropriate for the enforcement notice to stipulate their removal so as to remedy the breach and restore the land to its condition prior to the breach. The ground (f) appeal fails.

The appeal on ground (g)

19. The appeal on ground (g) is that the period for compliance falls short of what is reasonable.
20. The appellant effectively seeks a period of 12 months for compliance with steps 1 and 2 of the notice on the basis that more time is needed for him to search for alternative accommodation for him and his children. The appellant cites difficulties as regards finding an alternative location for the converted trailer referencing the 'individual and specific nature of the trailer'. The appellant comments that steps 3 and 4 would need to be complied with once the trailer has been removed and so an overall period of 15 months would be reasonable.
21. The need for an extension to the period for compliance needs to be balanced against the harm set out in the notice. No detailed evidence is submitted by the appellant related to difficulties in finding an alternative location for the trailer. In my view, the compliance period of 6 months for steps 1 and 2 already strikes the right balance between giving the appellant adequate time to seek alternative accommodation given the particular circumstances referred to, and securing compliance for the planning reasons identified in the notice. The existing compliance period for steps 3 and 4 similarly allows sufficient time to attend to fairly straightforward works to remove the hardstanding and septic tank, and to restore the land. The appellant submits no evidence as to why such works would take longer than one month after cessation of the residential use and removal of the trailer from the appeal site.

Human Rights and the best interest of the children

22. As the requirements set out in the EN require the cessation of the residential use of the site, this would interfere with the appellant's rights as set out in Article 8 of the Human Rights Act 1998. It appears on the available evidence that compliance with the EN would effectively render the appellant homeless. However, I found under ground (g) above that a period of 6 months is adequate to enable the appellant to seek alternative accommodation for him and his children. For this reason, I am satisfied that any interference with the appellant's human rights is proportionate to the need to adhere to planning law and policy and legitimate in the public interest such that there is no violation.
23. The appellant refers to the trailer being used as accommodation for his children. However, it is not clear from the evidence whether or not this is the children's' only or principal place of residence. In any event, I found a six month period to be reasonable to enable the appellant to seek alternative accommodation. As such, I am satisfied that compliance with the notice would not conflict with the best interests of the children.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

25. The appeal is dismissed and the enforcement notice is upheld.

V Bond
INSPECTOR