



Appeal Decisions

Inquiry Held on 28 February 2023

Site visit made on 28 February 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal A Ref: APP/P1133/C/22/3304517

Land at Stoneybrook Stables, Torbryan, Newton Abbot

- 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 D R Blight against an enforcement notice issued by Mr Teignbridge District Council ('the Notice').
 - The enforcement notice, numbered 18/00438/ENF was issued on 6 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised siting of a residential mobile home in the approximate position hatched blue on the attached plan.
 - The requirements of the notice are: (a) Stop using the Land for the siting of a residential mobile home; and (b) Remove the unauthorised mobile home from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/P1133/X/22/3308394

Land at Stoneybrook, Lane from Poole Cross to Broadhempston, Broadhempston, Totnes TQ7 6BB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr D R Blight against the decision of Teignbridge District Council.
 - The application Ref 20/1354/CLDE, dated 4 August 2020, was refused by notice dated 1 November 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is for the use of land for the stationing of an occupied residential mobile home for a period in excess of 10 years.
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Decision

1. With regards to Appeal A: It is directed that the enforcement notice is corrected and varied by:

the deletion of the words "the unauthorised siting of a residential mobile home" and the substitution of the words "the unauthorised use of the land for the siting of a mobile home for residential purposes" in section 3 of the Notice, 'The matters which appear to constitute the breach of planning control'; and the deletion of the words "(a) Stop using the land for the siting of a residential

mobile home” and the substitution of the words “(a) Stop using the land for the siting of a mobile home for residential purposes” in section 5 of the Notice, ‘What you are required to do’.

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

2. With regards to Appeal B: The appeal is dismissed.

Procedural Matters

3. I have taken the address for Appeal A from the Notice and that for Appeal B from the application form. Whilst these differ, the two appeals do relate to the same land.
4. The subject matter of the two appeals is the same and the issues raised are much the same. As such, the two appeals were heard simultaneously and are the subject of a single decision letter, though the reasoning for each decision is set out separately.
5. Given the nature of the appeals, all evidence was given under oath. Such evidence has to be given substantial weight in my assessment of the case.
6. Mrs Blight submitted a Proof of Evidence (‘PoE’) and was due to appear at the Inquiry. This changed during the morning, and she did not provide oral evidence. Although I have her PoE and a statutory declaration that she signed on 17 July 2020, as what she says in these was not tested under cross-examination I cannot afford them the same weight as the evidence that was so tested.

Application for costs

7. At the Inquiry an application for costs was made by Teignbridge District Council against Mr D R Blight. This application is the subject of a separate Decision.

The Notice

8. In his Opening statement, the Appellant claimed that the Notice was defective in respect of the alleged breach of planning control and the first reason given for the issuing of the Notice. This claim was initiated by the Council’s costs application, which was made in writing before the Inquiry.
9. In that application, the Council said it did not dispute the mobile home having been on the land for more than 10 years and that it did not have an issue with the stationing of the mobile home. It goes on to say that it targeted the permanent residential use of the mobile home. The Appellant makes the case that the first reason for issuing the Notice, that the use of the land had occurred within the last ten years, was incorrect as the Council acknowledged that it had been there for 13 years.
10. That last point is the nub of the appeals. The Council does acknowledge that the caravan has been on the land for more than 10 years, but it has not been used continuously for residential purposes for 10 years. Simply put, it is for the Appellant to demonstrate, on the balance of probability, that the Council is incorrect in this regard.

11. Amongst other things, section 173(1)(a) sets out that a Notice shall state “the matters which appear to the local planning authority to constitute the breach of planning control”. Established case law states that if a notice is hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breach, it would be a nullity.
12. If a Notice is flawed in some way, but not to the point where it becomes a nullity, it can be corrected or varied by an Inspector, using the powers in s176 of the Act. This is subject to the proviso that this would not cause injustice to any party. This position was acknowledged by the Appellant, as well as by the Council.
13. Whether the Appellant’s position was one that might be treated as a ‘hidden’ Ground (f) appeal was discussed. The Council said not, as it had not been given an opportunity to address such a case, and the Appellant stated that he did not wish to pursue that line; I have not, therefore, taken the matter further.
14. I find that the matters raised can be addressed using my powers in s176. I shall correct the allegation to clarify that it attacks the residential use of the caravan. There is no doubt that the parties understood this to be its purpose, as their cases are based around this; therefore, there would be no injustice to them. I can simply vary the first requirement of the Notice to reflect this; again, this would not cause injustice.

Reasons

Appeal A Ground (d) and Appeal B

15. An appeal made under Ground (d) is that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged in it. The time limit after which enforcement action can no longer be taken in respect of the material change of use (‘mcu’) alleged in the Notice is set out in s171B(3) of the Act as 10 years from the date that the use commenced (‘the relevant period’). Therefore, given the date the Notice was issued in Appeal A was 26 October 2021, the relevant period begins on 26 October 2011 (‘the relevant date’).
16. The application made under s191(a) of the Act sought to ascertain whether the use of land was lawful. Here, again, the 10-year time limit in s171B(3) applies. As the application was dated 31 January 2022, the relevant date in this appeal is 31 January 2012.
17. In both the Ground (d) and s195 appeals, the onus lies with the Appellant to make his case that the breach of planning control and the use of the land, respectively, occurred continuously for the relevant period on the balance of probability. I made it clear to all persons at the Inquiry that the Ground (d) appeal did not allow for any arguments regarding the ‘planning merits’ of the case to be made. Therefore, whilst some planning merits arguments were made at the Inquiry, they are not referred to here.
18. The site lies in a deeply rural setting where isolated farmsteads, dwellings and small settlements are linked by a network of lanes. It consists of land that is mostly set to grass. In addition, a stable building has been erected, and various structures and horseboxes sited. A sand school has been created.

19. The land slopes downhill from the narrow lane, from which access to the land is gained. The caravan is on relatively level land close to the lane; the slope increases as one moves away from the lane.
20. The Appellant and his wife bought the land at Stoneybrook in 2008. They moved the caravan onto the land in February 2009. It was moved within the site later in the year.
21. In December 2013, the Council received a complaint regarding residential use on the land. An investigation found that an extension had been added to the stable building on the land and that this was being used as a dwellinghouse (I refer to this as the 'extension'). The Appellant told the Inquiry that, as they were "not getting on so well", his wife moved into her own space in the extension while he stayed living in the caravan.
22. An enforcement notice was issued against the residential use of the extension, and this was the subject of appeals¹ by the Appellant, his wife and his daughter, who has an interest in the land. They also made an appeal, heard contemporaneously, against the refusal of the Council to grant planning permission for the dwelling². Those appeals were dismissed, and the enforcement notice was upheld, including the provision that the extension should be demolished. The Council subsequently agreed to a 6 month stay in relation to the use of the extension and that one of its two wings might be kept.
23. The Appellant told the Inquiry that his wife subsequently moved to his daughter's house in nearby Broadhempston, but that he had lived on the land in the caravan throughout the relevant period to the present day.
24. In the light of the above, the Appellant's position is that the caravan was used for residential purposes continuously from winter 2009 to the present day. The Council challenges this; its position is that there were significant breaks in its occupation that meant that the caravan had not been so used. It had not, therefore, become immune from enforcement action.
25. A report that the caravan was being lived in was the subject of an enforcement investigation by the Council in the summer of 2009. It concluded that no-one was living in it.
26. As part of the 2013 enforcement investigation, the Council served a Planning Contravention Notice ('PCN') on the site's owners. Two of the questions that were asked are of particular interest to this appeal. In answer to question (i), which asked 'What is the current use of the caravan edged blue on the attached plan?', the answer given was "The caravan is used ancillary to the equine use of the land". Question (l) asked 'What is the use of the extension edged orange on the attached plan?' to which the answer given was "Paul and Tessa Blight have lived there since Spring 2012".
27. In his decision letter for the appeals, dated 7 July 2015, the Inspector noted that the respondents were aware of the legal implications of knowingly or recklessly providing answers that were false or misleading. In the light of this, his conclusion on the evidence that they gave was "This suggests to me that the Appellants would have exercised care in completing the form such that it

¹ APP/P1133/C/14/2226225, 2226235 & 2226240

² APP/P1133/A/14/2226054

would be appropriate to attach significant weight to the answers that they have given to the PCN". He further observed that "Although the Appellants had an opportunity to consider this evidence, and did make other observations in an email dated 9 December 2014, there was no attempt to contradict the answers given to the PCN".

28. In a supporting statement for the planning application that led to the planning appeal, the following phrases are used: "we decided to build a wooden house around the stable block"; that this "used up all our savings"; and "all we wish is to be allowed to live out our remaining years here". In their statement for the appeal that followed, the use of the extension is again described in the plural, including: "our dwelling"; "our building" and "we do not overlook anyone"; and "as we spend our days here". These all point to the Appellant and his wife using the extension for residential purposes in the period from the Council's receipt of the complaint regarding this use to the end of the extended period of compliance with the upheld Notice. This would be in or around December 2012 to sometime in early 2016.
29. In his oral evidence to this Inquiry the Appellant said that he had lied in his PCN responses, and to the Inspector in the appeals. He also acknowledged lying in various pieces of correspondence with the Council. He defied anyone to not do so if they would otherwise lose their home. On the other hand, he said that nothing in his statutory declaration submitted in support of his s191 application was a lie.
30. In cross-examination, ('XX'), it was put to the Appellant that he told the truth at that time and that he was lying to the Inquiry. His responses to the questions and statement "You are potentially lying now?", "You could be lying to the Inspector now to keep the mobile home?" and "I put it to you that...you are lying to keep the mobile home", the Appellant replied "Potentially, yes", "Could be, I have no plan B" and "[That's] for the Inquiry to determine – am I lying or not", respectively. Whilst he made a sworn statutory declaration in support of his case, I find that its veracity is undermined by the manner in which he addressed these questions. It leads me to significantly doubt his case.
31. I apportion significant weight to the conclusions reached by the Inspector in the earlier appeals. To my mind, the evidence given to him by the Appellant, including in the PCN, was true. My finding is that the Appellant was attempting to save his home, in the manner he describes, when giving evidence before me at the Inquiry. As the Appellant said, when it was put to him that "all the evidence suggests you were living in the extension", he answered "Yes, it appears so".
32. Photographs showed that the dwelling created in the extension was warm, fairly spacious and comfortable. It required, the Inquiry was told, all of their joint savings to build it. It contrasted greatly with the Appellant's description of the caravan as being "cramped and cold". It did not ring true, as claimed in the Inquiry, that the Appellant continued living in the caravan. On the balance of probability, I find he moved with his wife into the manifestly better accommodation that was available in the extension. It is not probable that he would have eaten together there, in a "shared space" and returned to the caravan. In reaching this decision, whilst I understand that the Appellant might not have had too many problems with the "spartan" conditions in the caravan,

- given his working life at sea, it seems most unlikely that he would choose to live this way at home given the comfortable alternative in the extension.
33. The Appellant referred to marital difficulties that led to his wife needing her own space and moving to the extension. However, to my mind the evidence as a whole did not point to her living there alone. I find that it was much more likely that the caravan was used in the manner described by Tessa Mundy, in her XX, as "a retreat for them [Mr and Mrs Blight], if needed".
34. For the most part, Ms Mundy and Dr Cook visited the site together; it was estimated that this occurred in the order of 25 times over 14 years. In XX, both were of the view that the caravan was lived in but, as Ms Mundy said, she could not say that it was lived in every day. In answer to the question "Has there been any break in the occupation of the mobile home?" she said there "has been, but [the Blights had] gone back in".
35. As the Appellant said, the Council had little evidence of its own to counter his case. A series of photographs³ were provided by the Council, taken at the time of the investigation into the residential use of the extension. Only one of these was of the caravan; it is an external view, as Mr Hobbs acknowledged that he did not enter the caravan. He also told the Inquiry that he did not look through the door or windows at that time. He felt that he did not need to as "it looked vacant" and there was "no evidence of residential use". When asked what this evidence might be, he said that there was no wear to, nor bending of, the grass around the bottom of the steps.
36. In response to this point, the Appellant said that he "had to hide the [use of the] mobile home" and kept using different routes to access it, as he wanted it to look like no-one was living there.
37. Whilst the Council might have made a more thorough inspection, I understand its point regarding the grass. The photograph is clear enough to appreciate that there is no real indication of wear or regular use of the grass at the bottom of the steps to the caravan. The Appellant confirmed that this was the only point of access to the caravan; therefore, whether he took different routes to access the caravan it would still have meant the area at the bottom of the steps being used and this would have been evident from the condition of the grass.
38. Although she did not speak to it, Tessa Blight's PoE is considerably shorter than that of her husband. In respect of the use of the caravan, she states "The mobile home has now been in continuous use for permanent residential purposes for 13 years". For the reasons I have given, I find that this was not the case.
39. The Appellant's work as a Hydrographic Surveyor at that time took him away for up to half of a year. However, he explained that this was not all at one time and the longest period away that he could recall was two months. Following the lines of established case law, these interruptions were not material and would not have affected the continuous nature of the use.
40. Overall, I find that, on the balance of probability, the caravan was not continuously used for residential purposes for a period of 10 years.

³ Appendix 10 LPA Statement – Appeal B

Conclusions

41. With regards to Appeal A, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and variation.
42. With regards to Appeal B, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the stationing of an occupied residential mobile home for a period in excess of 10 years was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

Inspector

APPEARANCES (in order of appearance)

For Teignbridge District Council (TDC):

Gavin Collett	Counsel, instructed by TDC
Steven Hobbs	Senior Enforcement Officer TDC
Gary Crawford	Planning Officer TDC

For the Appellant:

Steven Anderson	Agent for the Appellant
Paul Blight	Appellant
Tasha Mundy	Witness
Dr Clive Marcus Cook	Witness

DOCUMENTS PRODUCED AT THE INQUIRY

Appellant's Opening statement

Council's Opening statement

Appellant's response to TDC's Costs Application

Signed Statement of Common Ground

Council's Closing statement and legal authorities⁴

⁴ *Ravensdale Limited v SSCLG* [2016] EWHC 2374 (Admin)
Nelsovil Limited, and Others, v Minister of Housing and Local Government [1961]