



Appeal Decisions

Site visit made on 11 April 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

**Appeal Refs: APP/P2935/C/22/3313941 (Appeal A) &
APP/P2935/C/22/3313942 (Appeal B)**

Land south of Hartburn Bridge, Morpeth, Northumberland NE61 4JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Sean McWilliam (Appeal A) and Sheila McWilliam (Appeal B) against an enforcement notice issued by Northumberland County Council.
 - The enforcement notice was issued on 23 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the siting of a caravan in the approximate position shown outlined in blue on the plan attached to the enforcement notice.
 - The requirements of the notice are: (i) Remove the caravan from the land. (ii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above, and restore the land to its condition before the breach took place by levelling the ground and reseeding it with grass.
 - The period for compliance with the requirement (i) is four weeks, and the period for compliance with requirement (ii) is six weeks.
 - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice be corrected by:
 - the deletion of the text of the allegation in full, and its substitution with the text: 'Without planning permission, the material change of use of the land to a residential use involving the siting of a caravan in the approximate position shown outlined in blue on the plan attached to the enforcement notice.'
 - the deletion of the text of the requirements in full and its substitution with the text: '(i) Cease the residential use of the land. (ii) Remove the caravan from the land. (iii) Remove from the land all building materials and rubble arising from compliance with requirement (ii) above, and restore the land to its condition before the breach took place by levelling the ground and reseeding it with grass.'
 - The deletion of the text of the compliance paragraph in full and its substitution with the text: 'The period for compliance with the requirements is 6 months.'
2. Subjects to these variations, the enforcement notice is upheld.

The enforcement notice

3. With regard to the wording of the notice, it alleges 'the siting of a caravan...' at the appeal site. To reflect the definition of the term 'development' in s55(1) of the Act, the notice should state a 'material change of use of the land'. However, the courts have established that the siting of a caravan in itself is not a material change of use. It is therefore necessary to identify the purpose for which the caravan has been sited.
4. In this case, it is clear from the reasons given within the notice for its issue that the Council's concern is the siting of the caravan for residential use. It follows that the requirements of the notice should also include the cessation of the unauthorised use of the land. I am satisfied that these corrections do not cause any injustice to any party, or make the notice more onerous.

Preliminary Matters

5. I have taken into account the appellants' comments relating to the planning merits of the caravan, including However, planning merits can only be considered under a ground (a) appeal, which is that planning permission ought to be granted for the unauthorised development. The appellants have also advanced the case for their proposed new eco-home, but again, this matter is outside the scope of this appeal.

Reasons

6. Ground (g) is that the time given to comply with the notice is too short.
7. The appellants explain that the caravan was hastily towed on to the land in June 2022 after they had received an eviction notice. The caravan was installed during drought conditions, but subsequent wet weather and flooding meant that the caravan had become bogged down. They say that normal spring weather would see the ground dry enough to extricate the caravan, and they anticipate such conditions by the end of May 2023.
8. Due to the timing of the appeal process, it is now May 2023 at the time of writing, and so the compliance periods given would cover the period that the appellants state is needed for practical reasons of remove the caravan in dry conditions.
9. However, the appellants go on to say that ejection from the appeal site will leave them without a home. They cite difficulties such as not being able to rent privately due to Mr McWilliams's employment status, and state that they have experienced other difficulties in finding suitable accommodation.
10. They state an intention to apply for planning permission to build a small sustainable house in the near future. I note from the Council's statement of case that they received a planning application in November 2022 for 'micro farming'. However, the application had invalid location plans and an incorrect fee. The appellants give no further indication that they are pursuing any application for a new residence, and so it must be concluded that this solution would be some time off.
11. The enforcement notice, which will be upheld, will interfere with the appellants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and

correspondence. This is a qualified right, whereby interference may be justified in the public interest, subject to the concept of proportionality. In enforcement appeals, human rights considerations come into play under ground (g) as the decision maker has some discretion.

12. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. However, in view of the circumstances outlined above, the notice does not afford the appellants reasonable time to look for alternative accommodation.
13. To allow that to happen, I consider that a period of 6 months should be allowed, which would be proportionate and necessary to avoid a violation of the appellants' rights under Article 8.
14. To this extent, the appeals on ground (g) succeed.

Conclusion

15. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

Elaine Gray

INSPECTOR