



Appeal Decision

Site visit made on 10 May 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/X2220/C/22/3300976

Kittington Farm, Kelk Hill, Nonnington, Dover, Kent CT15 4ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Andrew Fox-Pitt against an enforcement notice issued by Dover District Council.
 - The notice, numbered COU/18/00270, was issued on 19 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land identified on the attached plan from agriculture to a mixed use for agriculture and as a caravan site for the stationing of two caravans for permanent residential occupation and the siting of shipping containers for ancillary residential use, shown in the approximate location on the attached plan.
 - The requirements of the notice are to:
 1. Cease the use of the land as a caravans site and cease residential occupation of the land.
 2. Remove the caravans from the land.
 3. Remove the shipping containers from the land.
 4. Remove from the land all fixtures, fittings, domestic items, equipment and paraphernalia and resultant materials and rubbish.
 - The period for compliance with the requirements is 12 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting the words 'for ancillary residential use' from section 3 and substituting with 'to facilitate the mixed use'.
 - Deleting requirement 1 in section 5 and substituting with 'Cease the mixed use of the land through the cessation of the use of the land as a caravan site and the cessation of the residential occupation of the land'.
 - Deleting requirement 3 in section 5 and substituting with 'Cease the use of the shipping containers for ancillary residential use'.
 - Adding the words 'connected to the residential use of the land' after the word 'rubbish' at the end of requirement 4 in section 5.
2. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Background

3. The alleged breach is the material change of use of the land from agriculture to a mixed use for agriculture and as a caravan site for the stationing of two

caravans (one static and one touring) for permanent residential occupation and the siting of shipping containers for ancillary residential use.

4. The static caravan and containers are positioned inside a dilapidated barn which forms part of a group of agricultural buildings surrounded by agricultural land. The touring caravan is located within a walled enclosure outside of, but adjacent to the same barn.

The Appeal on Ground (b)

5. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make his case on the balance of probabilities.
6. The appellant acknowledges that the static caravan is used for residential accommodation. The ground (b) appeal is therefore restricted to the touring caravan and the shipping containers. In terms of the former he states that it isn't used for residential occupation or in connection with the occupation of the static caravan but is a farm caravan used as a chattel.
7. In response, the Council assert that at the time the enforcement notice was issued the touring caravan was being used in connection with the residential occupation of the land. The photograph attached to the enforcement notice shows a chair and domestic storage box outside the touring caravan and a step up to the door. Those items suggest a residential use although there are no photographs or other evidence which show actual use.
8. The Council state that its officers were advised during a site visit in March 2019 that two people were living in a caravan inside the barn. That must therefore be the static caravan. That was confirmed in the site visit of October 2019. Reference is made to a touring caravan being on site but no explanation is provided of its use. That is similarly the case in respect of the Council's January 2020 site visit and the observations of an Inspector appointed to deal with an appeal against the refusal to grant a LDC for the stationing of the static caravan for residential accommodation, in May 2021¹.
9. According to the Council, the landowner confirmed to its investigating officer in February 2022 that the caravans (plural) remained on site and continued to be used for residential occupation. However, during a site visit in March 2022 the investigating officer spoke to the occupant who confirmed that she still lived in the static caravan. No reference is made to the use of the touring caravan.
10. At the time of my site visit, it was being used for general storage. However, s174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice.
11. On the chattel point, the Council state that the site is a redundant farm complex and is not actively farmed. Even if that is the case, it does not necessarily mean that farm related items will no longer be on the land. Indeed, I saw numerous items in and around the barn which could have been used in connection with a previous agricultural use. Nevertheless, describing the touring caravan as a chattel is vague doesn't explain its use. If it belonged to the farm, it is not explained how it was used and no evidence is provided which

¹ Certificate of lawful use or development - Appeal Ref: APP/X2220/X/20/3245793

shows that it wasn't in residential use, despite the onus being with the appellant to do so.

12. That leads me to find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the land was not being used as a caravan site for the stationing of two caravans (the touring and static) for permanent residential occupation.
13. The appellant states that the two shipping containers within the barn are used for storage of items, equipment and materials used in connection with agriculture and are not used in connection with the residential occupation of the land. The Council allege their siting to be for ancillary residential use. To that end they state that at the time the enforcement notice was issued the containers were being used to store domestic items, materials, equipment and paraphernalia, facilitating the breach of planning control. Reference is made to site visit observations in October 2019 and to confirmation from the occupant of the static caravan during a site visit in January 2020 that they contained domestic items.
14. The photographs attached to the enforcement notice show only the exterior of the containers. The door of one of the containers is slightly ajar so I would expect the Council to have looked inside but no photographs or other evidence is provided. In front of the containers a lawn mower, timber planks and various other items can be seen.
15. At the time of my site visit, one of the containers was being used to store a quad bike, motorbike and small tractor, along with various tools and other items. The other container was being used to store what appeared to be discarded or broken items such as a jet ski, corrugated and timber sheeting, paint pots and a gas cylinder. Those items did not appear to have been recently moved.
16. The containers therefore appear to be used now for general storage, some of which may be attributable to the residential use of the caravans but some of which is likely to be agricultural in nature, particularly items such as the small tractor.
17. As indicated, it is the use at the time of the notice which matters. However, on the basis of the very limited evidence before me, I find it is more likely than not that the siting of the containers facilitated the mixed use of the site for agriculture and as a caravan site for the stationing of two caravans for permanent residential occupation, rather than solely being for ancillary residential purposes as alleged. I shall correct the allegation to reflect that finding.
18. The ground (b) appeal succeeds to that extent.

The Appeal on Ground (d)

19. An appeal under ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action, having subsisted for the relevant four or ten year time limit periods laid down by s171B of the 1990 Act.
20. The appellant does not seek to argue that the stationing of the static caravan for residential occupation is immune from enforcement action through the

passage of time. Indeed, as noted, an appeal against the refusal to grant a LDC was dismissed in May 2021.

21. Based on my own observations I find no reason to arrive at a different conclusion that the structure is a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the relevant period for immunity from enforcement action is 10 years, pursuant to s171B(3). The previous Inspector noted that the appellant had not claimed that the caravan had been occupied for that length of time prior to the date of the application. That is similarly the case for this appeal, as it relates to the period prior to the date of the enforcement notice. Nor are submissions made to that effect for the touring caravan.
22. The ground (d) appeal is made on the basis that the two shipping containers have been sited on the land for more than four years and are therefore immune from enforcement action by virtue of s171B(1) of the 1990 Act.
23. Whilst the siting of containers is usually regarded as operational development, being tantamount to a permanent building, s55(2)(a) of the 1990 Act provides that *'the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building'* shall not be taken to involve development of the land requiring planning permission.
24. In this case, the containers are sited within a barn, so affect only its interior. Consequently, they do not amount to development. However, I have found under ground (b) that the siting of the containers likely facilitated the mixed use of the site for agriculture and as a caravan site for the stationing of two caravans for permanent residential occupation.
25. Caselaw dictates that where a notice is directed at a material change of use, it may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action, so that the land is restored to its condition before the change of use took place².
26. Consequently, despite not amounting to development, the enforcement notice can require the removal of the containers as facilitating the mixed use of the land.
27. The ground (d) appeal fails.

The Appeal on Ground (f)

28. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
29. In this case, as the requirements of the notice are to cease the unauthorised use and to remove the caravans, shipping containers, fixtures, fittings, domestic items, equipment and paraphernalia and resultant materials and rubbish. The purpose of the notice is therefore to remedy the breach of planning control.

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598; *Somak Travel v SSE & Brent LBC* [1987] JPL 630

30. The first requirement is to '*cease the use of the land as a caravans site and cease residential occupation of the land*'. Because the requirements of an enforcement notice should square up with and follow logically from the allegation, that should be corrected to require the mixed use of the land to cease through the cessation of the use of the land as a caravan site (singular) and the residential occupation of the land. I shall correct the notice accordingly.
31. The appellant argues that the removal of the caravans is excessive (requirement 2) as they are contained within an agricultural barn and cannot be seen. However, since the appellant chose not to pursue an appeal on ground (a) for consideration of the deemed planning application, it is not open to me to consider matters relating to the planning merits under ground (f). The only point at issue is whether the requirements exceed those necessary to remedy the alleged breach of planning control.
32. In that regard, requirement 2, follows logically from a corrected requirement 1, it tallies with the allegation and does no more than require restoration of the land to its condition before the breach. It is not therefore excessive for the purposes of remedying the breach of planning control.
33. The appellant argues that the static caravan can remain on the land and be used as agricultural chattel. Although I accept that the residential use of the land could cease without the removal of the caravans, it is not explained how the caravans would be used for agricultural purposes. As noted, chattel is not a use.
34. I have found under ground (b) that the siting of the shipping containers facilitates the mixed use of the site. Moreover, there is no dispute that the lawful use of the land is agricultural, and, in any case, the notice does not require that use to cease. Consequently, requirement 3 to remove the shipping containers from the land is excessive as they are partly used for agricultural storage. The requirement should therefore be varied to require their ancillary residential use to cease.
35. The final requirement is to remove from the land all fixtures, fittings, domestic items, equipment and paraphernalia and resultant materials and rubbish. That is excessive as it could be taken to include agricultural related items. The requirement should therefore be varied to refer to those aspects which are connected with the residential occupation of the land.
36. The ground (f) appeal succeeds to the extent explained.

The Appeal on Ground (g)

37. The ground (g) appeal is that the 12 months given to comply with the notice is too short. The appellant requests a period of 24 months as the occupant of the static caravan was due to give birth in July 2022 and it would be unreasonable to evict a single mother and baby who choose not to live in a traditional house. It is argued that the additional time would provide the occupant opportunity to submit a planning application and/or seek alternative accommodation, if needed.
38. However, a period of 12 months would provide ample opportunity to do the same, and is proportionate in human rights and equality terms, and having regard to the best interests of the child.

39. Moreover, a period of 24 months would be tantamount to a temporary planning permission and is excessive, not least because the planning merits have not been considered by a ground (a) appeal. In my view, 12 months would strike a reasonable balance between the public interest in the enforcement notice being complied with expeditiously, against the private interests of the appellant and the occupant of the static caravan.

40. The ground (g) appeal fails.

Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Richard S Jones

INSPECTOR