



Appeal Decision

Site visit made on 27 June 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/J4423/C/22/3305479

Land 100m south of More Hall, The Gateway, More Hall Lane, Sheffield, S36 3ST

- 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 Kevin Hodgson against an enforcement notice issued by Sheffield City Council.
 - The enforcement notice, numbered RC/127249, was issued on 12 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a mixed use for horse grazing and stabling, dog kennel with exercise area and the siting of a shepherd's hut used for residential purposes.
 - The requirements of the notice are:
 - (1) Stop the residential use of the land within the area of land edged red
 - (2) Remove the shepherd's hut from the land as shown hatched purple on the attached plan
 - (3) Remove the concrete base from the Land, (shown edged blue on the attached plan and identified as "4 unauthorised hard stand" in the photos attached to this notice)
 - (4) Remove the concrete base that is immediately in front of the stable from the Land, (identified as "5 concrete base, (stable)" in the photo appendix attached to this notice).
 - The period for compliance with the requirements is 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the Enforcement Notice is corrected by:

In section 2 – THE LAND TO WHICH THE NOTICE RELATES, the deletion of the words 'Land 100m south of More Hall'.

In section 5 – WHAT YOU ARE REQUIRED TO DO, in step (1) the words 'the land within the area of land edged red' are replaced with 'the Land'; and, in step (2) the words 'the land as shown hatched purple on the attached plan' are replaced with 'the Land'.

2. The appeal is dismissed and the enforcement notice is upheld with corrections.

Matters concerning the Enforcement Notice

3. There are various addresses used for the site within the documents associated with the appeal. The address in the banner heading above is taken from the Enforcement Notice. However, the accuracy of the distance and direction from

a building elsewhere is unclear. I have therefore relied on the appellant's address for the site as The Gateway, Moor Hall Lane, Wharncliffe Side, Sheffield S36 3ST.

4. Part 2 of the Notice defines the land shown edged red on the attached plan as 'the Land'. The effect of the requirement in 5(1) of the Notice requires the cessation of the use of the site for residential purposes. For consistency with the earlier definition, the wording in part 5(1) is amended to refer to 'the Land'.
5. The requirement in step 5(2) could be interpreted in more than one way. Accordingly, I have sought the further views of the main parties as to the intent of the Notice and whether any injustice would arise if the requirement in step 5(2) were clarified as one to remove the shepherd's hut from the Land.
6. The appellant contends that an injustice would arise. However, the earlier case set out by the appellant includes the anticipated removal of the shepherd's hut from the Land. It states the potential effects that would arise without the facility on site and the appellant has therefore addressed this possibility in his submissions. Given that approach, I cannot find that injustice would arise if I were to improve the certainty in the phrasing of that requirement. Accordingly, step 5(2) is varied to read: 'Remove the shepherd's hut from the Land'.
7. The appellant's response did, however, raise the potential alternative use of the caravan. This is a matter I return to below under the heading Ground (f)

Ground (b) and (c)

8. The grounds of appeal are (b) that the matter alleged in the notice has not occurred and (c) that those matters (if they occurred) do not constitute a breach of planning control.
9. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability. To succeed on ground (b) the appellant must prove that the use of the land identified in the notice has not changed to include the siting of the shepherd's hut for residential purposes.
10. The site is sloping open land contained by established treed and hedged boundaries. The shepherd's hut forms a tight group with the stables and kennels on a levelled area close to an access point on to the Land. As a single unit of occupation and including more than one primary use, the Land forms a single mixed use planning unit. The basis of the appellant's case is that the shepherd's hut is used solely in conjunction with the lawful equine and canine uses on the site such that no material change of use has occurred and no new planning unit has therefore been created.
11. The Council's evidence states that prior to service of the Notice investigations including discussions with the appellant indicated that the shepherd's hut was being used to provide shelter and welfare facilities incidental to the lawful uses of the site. In addition, stayovers in association with overnight hunting but also for fishing trips and with family members at weekends were recorded as taking place. The reported stayovers are not contested by the appellant for the purposes of the appeal.
12. There is no dispute between the parties that the shepherd's hut would fall within the definition of a caravan, or that it could provide the necessary

facilities for human habitation despite the lack of connection to some services. Accordingly, as the unit was used as accommodation for purposes not demonstrated to be functionally associated with the lawful uses of the site, I find the allegation in the notice has occurred.

13. The residential use of the Land was facilitated by the introduction of the shepherd's hut. As a feature of some scale, the hut and associated paraphernalia – including a gas bottle, concrete bases, enclosure fencing and a TV aerial, appear distinct from the character of the nearby buildings intended to support outdoor recreational activities. As defined by s55(1) of the Act, the material change of use of the land is 'development' requiring planning permission. In the substantial absence of evidence to demonstrate that the residential use was not a breach of planning control, the appeals on grounds (b) and (c) therefore fail.
14. I note the appellant's contention that, as operational development within the scope of s55(1) of the Act, the hard stand and concrete base referenced in section 5 of the Notice are distinct from the alleged breach of planning control. However, it is well established caselaw¹ that an enforcement notice can seek the removal of operational development facilitating a material change of use of land.
15. Notwithstanding, the appellant has provided a site plan used in association with approved planning permission 06/00053/FUL. This was for the erection of 2 stables and a tack room. It shows a concrete yard pad extending beyond the front of the stable. However, according to the Council, Condition 4 of the planning permission explicitly omitted the yard pad and prevented the concrete base from extending beyond the footprint of the building unless otherwise agreed in writing by the Local Planning Authority.
16. There is little before me to demonstrate that the hard stand or concrete base were provided otherwise than in conjunction with the change of use of the land. No claim is made that either was approved in writing in conjunction with planning permission 06/00053/FUL, or that they benefit from explicit planning permission otherwise. Furthermore, the appellant has specifically cited that no claim under ground (d) is made in respect of that operational development and there is little evidence as to the time of their construction in any case.

Ground (f)

17. The appellant contends that the shepherd's hut could be retained to provide only incidental facilities to the existing lawful uses such that no material change of use of the land would arise. However, the requirements in the Notice do not exceed what is necessary to remedy the breach of planning control by discontinuing any use of the land, or by restoring the land to its condition before the breach took place.
18. I note the appellant's reference to appeal cases elsewhere. However, as the Notice in this case relates to the introduction of a new primary (residential) use which is unrelated to the lawful site uses, it is distinct from those cases finding the use of shepherd's huts as incidental or ancillary to existing uses on those various sites. An appeal concerning whether a building amounts to a

¹ *Murfitt v SSE* [1980] JPL 598, and *Somak Travel v SSE* [1987] JPL630

dwellinghouse is different to the use of a caravan unit for residential purposes. Those decisions therefore attract negligible weight in the case before me.

Conclusion

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

R Hitchcock

INSPECTOR