



Appeal Decisions

Site visit made on 20 June 2023

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal A Ref: APP/B1740/C/22/3307656

Appeal B Ref: APP/B1740/C/22/3307657

Land at Arnewood Lodge, 223 Everton Road, Hordle, SO41 0HE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by Mrs Angela Powell (Appeal A) and Mr Andrew Powell (Appeal B) against an enforcement notice issued by New Forest District Council.
 - The notice, numbered EN/22/0191, was issued on 24 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land for the unauthorised siting of a mobile home for the purpose of self-contained holiday let accommodation.
 - The requirement of the notice is to: (i) Permanently cease using the mobile home shown in the approximate position hatched in blue on the attached plan for the purpose of self-contained holiday accommodation.
 - The period for compliance with the requirement is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/B1740/W/22/3307540

Arnewood Lodge, 223 Everton Road, Hordle, SO41 0HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Angela Powell against the decision of New Forest District Council.
 - The application Ref 22/10142, dated 14 March 2022, was refused by notice dated 17 June 2022.
 - The development proposed is retention of caravan for purpose of s/c accommodation.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by the substitution of the description at section 3 of the notice by the following: "Without planning permission, the material change of use of the land to a mixed use for use as a dwellinghouse and for the siting of a mobile home for the purpose of self-contained holiday let accommodation"; and varied by the substitution of 6 months and 1 day for the period for compliance.
2. Subject to the correction and variation, the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Appeals A and B

Ground (c)

4. This ground is that the matters stated in the notice do not constitute a breach of planning control.
5. Arnewood Lodge is a detached dwelling set in a large plot. The appeals concern a mobile home stationed in the rear garden, some 69m away from the dwelling itself and with its own parking area with separate access from a laneway running alongside. The appellants live in the dwellinghouse. The mobile home was stationed on the site in 2018, apparently to accommodate the appellants' daughter and family. At that time the Council came to the view that it was within the curtilage of the dwellinghouse and was being used for purposes incidental to the enjoyment of the dwellinghouse as such. Among the considerations was the assertion by the family that there would be reliance on the main house due to having no laundry facilities within the mobile home and that most meals would be family meals taken together in the main house. In other words the mobile home would not be used as a separate unit of residential accommodation.
6. However, since at least July 2021 the mobile home has been used for holiday letting, the appellants' daughter and family now living elsewhere. Although the mobile home remains connected to services at the dwellinghouse, and the use is supervised and serviced by the dwellinghouse occupants, the use is not one that I consider to be incidental or ancillary to the use of the dwellinghouse as such. The appellants' argument on this ground, however, is that it does not amount to a material change of use, having regard to the previous lawful use and that the mobile home is lawfully sited and has been since 2018.
7. First, I must note that the stationing or siting of a mobile home on land is not development in itself, that is concerned with the purpose of stationing the mobile home on the land, which in this case is for the provision of holiday accommodation. Although similar in many ways to a use as ancillary accommodation, there are significant differences. The pattern of coming and going of holiday makers, and that of their day to day use of the accommodation, is likely to be significantly different to that of permanent residents, and there is likely to be frequent turnover of occupants. These differences are likely to be noticeable by people living nearby and are likely to be, at the very least, perceived as affecting local character, regardless of management controls designed to mitigate the impact of noise from the holiday accommodation use on neighbouring properties. It is a different use, but as noted by the appellants, whether it is a breach of planning control depends on the materiality of the change. This depends to some extent on the relevant planning unit.
8. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. A planning unit represents an area of land or property within which a primary use (or perhaps mixed use) is identified and any other uses within that same unit are ancillary to that primary use. The starting point is the unit of occupation, in this case the whole property. If some smaller unit different from the unit of occupation can be identified as a separate use both physically and functionally, then this is the appropriate planning unit.

9. In this case, although some of the land is clearly exclusively associated with the mobile home use, and so with the dwellinghouse, there is not sufficient demarcation between the uses on the ground to establish separate identifiable planning units. For example, holiday occupants of the mobile home have access to the lawn area to the east of the mobile home for recreation purposes, as do the dwellinghouse occupants. Thus, while the use of the mobile home is functionally different to that of the dwellinghouse, both are primary uses that occupy the same land, and hence the correct description of the breach of planning control is that of a mixed use of dwellinghouse use and use for the stationing of a mobile home for the purposes of holiday let accommodation. It is trite law that where there is a mixed use it is not open to the local planning authority to decouple elements of the use in the description of the breach. I shall therefore correct the description in the notice to reflect the mixed use of the land, and this does not cause prejudice to either party.
10. As set out above, the change of use of the planning unit to provide holiday let accommodation in addition to dwellinghouse use has changed the character of the use of the land, in turn affecting the character of the area. As a matter of fact and degree, I consider that the change has been material. In coming to this view I have had regard also to an appeal decision¹ referred to by the appellant whereby planning permission was granted for the use of an annex to a dwelling house as a holiday let on condition that it remained ancillary to the use of the main dwelling and within the same planning unit. However, the decision itself makes clear that the holiday let use was not an ancillary residential use, and the reason given for the relevant condition was to restrict the use of the property to a holiday let use and also to prevent the annex from becoming a separate permanent residential dwelling.
11. Overall I consider that there has been a material change of use of the land. This is development requiring planning permission, in the absence of which the appeal on this ground cannot succeed.

Ground (d)

12. This ground is that it is too late to take enforcement action. What is claimed is that if the use is not deemed to be incidental to the dwellinghouse use, then that has always been the case and so the mobile home would have been operating as a dwelling house continuously for a period of greater than 4 years without enforcement action being taken between April 2018 and 24 August 2022, invoking the 4-year rule by virtue of section 171B(2) of the 1990 Act. This argument is misconceived for a number of reasons, but principally because section 171B(2) is only concerned with a change of use of a building to use as a single dwelling house. The mobile home is not a building, and stationing a mobile home for any purpose is a use of land. When the change of use is a breach of planning control, enforcement action can be taken for 10 years after the use commenced. It follows that this ground cannot succeed.

Ground (e)

13. This ground is that the notice was not properly served, but in this case it is pleaded in relation to the time period within which the appellants were advised by the Council that they could appeal against the refusal of the planning application. The enforcement notice itself was accompanied by documentation

¹ APP/M9496/C/16/3151187

specifying clearly the correct period within which an appeal could be made against it, that is before the effective date specified on the notice. Obviously the appeals were made in time. Other matters raised under this ground are not matters I need deal with.

Ground (f)

14. This ground is, in this case, that the requirement of the notice exceeds what is necessary to remedy the breach of planning control. It is argued that the requirement to cease using the mobile home for the purpose of self-contained holiday accommodation might prevent the use for holiday accommodation for family and friends visiting the dwelling house. This would not arise if the requirement fully reflected the breach by requiring the use for self-contained holiday **let** accommodation to cease, and I shall vary the notice to that effect. Letting the mobile home to family and/or friends for holiday accommodation could not be construed as being ancillary or incidental to the use of the dwellinghouse as such, so no lawful right is likely to be affected.

Ground (g)

15. The appeal on this ground seeks to extend the period for compliance with the notice to 6 months and 1 day in order to honour bookings that have already been taken. While it may have been prudent, as advised by the Council, to cease taking bookings once the planning application was refused or the notice issued, it remains the case that appellants are entitled to act as though their appeal may be successful. In view of the potential disruption to prospective users, I consider the period sought to be reasonable in the circumstances, and the appeals succeed to that extent.

Appeal C

16. This is the appeal against the refusal of planning permission for 'retention of caravan for purpose of s/c accommodation'. It is clear from the documents submitted with the application and appeal that what is sought is retrospective planning permission for the current use of the land, that is for the stationing of a mobile home for the purposes of self-contained holiday let accommodation, and I deal with the appeal on that basis.
17. The site is in the Green Belt, where inappropriate development is considered harmful and should not be approved except in very special circumstances. Material changes of use are not inappropriate provided that they preserve its openness and do not conflict with the purposes of including land within it. Much of the appellant's submissions on this point concern the relationship between the proposal and the position accepted as lawful by the Council in 2018. However, the lawfulness of the use of the land was contingent on the circumstances pertaining at that time.
18. The Caravan Sites and Control of Development Act 1960 (the 1960 Act) provides that a caravan site licence is not required for the use of land as a caravan site if the use is incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated (Schedule 1 paragraph 1), but the planning permission granted by GDPO Part 5 is only for the purposes specified in paragraphs 2 to 10 of Schedule 1. Although the Council refer to GDPO Part 5, the use of land within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse

as such is excluded from the definition of development by section 55(2)(d) of the 1990 Act, and hence does not require, or benefit from, planning permission, but only so long as those circumstances endure. While regard may be had to it as a fallback position, it does not provide the appropriate baseline for determination of whether proposed new development would or would not be inappropriate development in the Green Belt.

19. The development in this case involves the permanent stationing of a mobile home for the purposes of providing holiday accommodation, along the associated paraphernalia and holiday related activity. The overall development would be likely to be clearly visible from the open countryside to the east, from which it would be perceived as a separate development to the dwellinghouse and its outbuildings, while activity associated with the use would render the development evident from the laneway to the west. The overall effect would be to reduce Green Belt openness. The failure to preserve Green Belt openness means that the proposal must be regarded as inappropriate development.
20. So far as the location is concerned, the development plan seeks to meet most development needs within settlement boundaries and residential development within the countryside is only considered acceptable in specified circumstances, none of which apply to this proposal [Policy DM20 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management (LP2)]. Further, the limited circumstances in which tourism and visitor facilities may be considered acceptable outside of the built-up areas do not support the proposal [LP2 Policy DM13 and saved Policy CS19 of the New Forest District (outside the National Park) Core Strategy]. The development therefore conflicts with key aspects of the sustainable development strategy for the District.
21. The impact on the character of the area has also been raised. The laneway leading to and passing the site is a narrow no-through-road serving a small number of dispersed properties, in what appears to me to be a quiet and tranquil part of the countryside. Although the mobile home is largely screened from the laneway when the access gates are closed, it is in close proximity and the introduction of the holiday accommodation use, with frequent turnover of occupants and associated noise and activity, is likely to adversely affect tranquillity and be sensed as discordant and detrimental to the rural character of this area, contrary to LP2 Policy DM20, which seeks to avoid harm to rural character, and to the New Forest District Local Plan Part 1: Planning Strategy (LP1) Policy ENV3 insofar as it encourages high quality design that contributes positively to local distinctiveness and enhances the character of the locality.
22. Separate to the impact on local character, the matter of harm to the living conditions of others due to the noise and disturbance generated by the use is also a matter of concern to the Council, and there has been complaints from neighbours. To address this the appellants have instituted changes in 'house rules' and how they supervise the use, including making use of noise monitoring to alert the occupants of the dwellinghouse when specified levels are exceeded. They have also carried out some very basic analysis of the noise environment, though they do not purport to have relevant qualifications or experience in this respect. This is a highly technical field and I would be surprised if the findings, insofar as they say the noise generated by the use would be barely noticeable on the lane and in neighbouring properties, were able to withstand expert scrutiny. However, neither have I had noise evidence

to the contrary, complaints aside. Overall, while I consider that there is potential for significant disturbance of neighbours in the absence of management controls, the site is not so close to neighbouring properties that noise disturbance is inevitable, and implementation of a satisfactory noise management plan, which could be secured by condition, should enable mitigation of noise generation so as to avoid material harm to the living conditions of neighbours. I find accordingly that there is not sufficient evidence to sustain a finding of conflict with LP1 Policy ENV3 insofar as it seeks to avoid unacceptable effects on residential amenity.

Other considerations

23. The main consideration advanced in favour of the appeal has been that the use differs little from what is already permitted. However, I have found significant differences between the former and present use. Further, as noted above, the lawfulness in planning terms of the stationing of the mobile home for purposes incidental to the use of the dwellinghouse as such is very much dependent on the circumstances pertaining at the time. The precise circumstances immediately preceding the change of use, the appellants' daughter and partner and 2 children living full time in the mobile home, albeit in a way that maintained sufficient connection with the dwellinghouse use as to remain ancillary, have not endured and it is open to question whether they would be repeated. It has not been suggested that they will. The appellant has indicated that in the future the mobile home could be used for accommodating visiting family and friends for short stays. Such visitors would be expected to align their activities with the dwellinghouse occupants rather than as separate households. In terms of frequency of occupation and the impact of such use on local character, I consider that there would be far less impact. Nonetheless, given that there is no requirement to remove the mobile home, I consider that its continued presence and potential use as ancillary accommodation to the dwellinghouse should be given considerable weight as a fallback. The economic benefit to the area of the holiday use is also a consideration to which I attach considerable weight.

Planning balance

24. In balancing all of these considerations, substantial weight must be given to any harm to the Green Belt, the definitional harm and loss of openness in this case, and there is also harm due to the conflict with the sustainable development strategy and harm to the character of the area, both of which add considerable further weight against the proposal. To justify a grant of planning permission for inappropriate development in the Green Belt there must be considerations which clearly outweigh the definitional and other harm. However, the weight I accord to the benefits identified and to the fallback position are not sufficient in this case to clearly outweigh the totality of the harm identified, so that very special circumstances do not exist. It follows that the proposal conflicts with LP2 Policy ENV2, and indeed with the development plan read as a whole. In the absence then of material considerations to indicate that the determination should be other than in accordance with the development plan, planning permission should be refused

Other matters

25. The holiday use proposed also has the potential to adversely affect the integrity of nearby sites of nature conservation importance, namely the New Forest

Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation, due to recreational pressures and air and water quality impacts. The Council has, or participates in, schemes which Natural England has accepted would avoid adverse effects, and the appellant has submitted an undertaking made under section 106 of the 1990 Act to meet the air quality monitoring contribution required. While disputing the requirement for entering schemes aimed at overcoming the other potential impacts, the appellant has indicated that she would provide the necessary commitments if required. Had I been granting planning permission I am confident that measures necessary to avoid the relevant adverse effects could have been secured, but in the event this requires no further consideration.

Conclusion

26. For the reasons set out above, and having considered all other matters raised, I conclude that Appeal C should be dismissed.

Paul Dignan

INSPECTOR