
Appeal Decision

Hearing Held on 1 August 2023

Site visit made on 2 August 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/E2001/C/22/3308911

Land at California Fields, York Road, Barmby Moor, East Riding of Yorkshire YO42 4HT

- 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 Richard Jarvis against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 9 September 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of agricultural land to a mixed use comprising of siting of a static caravan for residential use and open air storage, and the laying of hardstanding to facilitate the change of use.
 - The requirements of the notice are:
 - (a) Cease use of the land for residential use
 - (b) Remove the static caravan from the land
 - (c) Remove all domestic goods, chattels, items and paraphernalia from the land
 - (d) Cease the use of the land for open air storage
 - (e) Remove from the land all items stored within the area edged red on the plan attached to the notice, including, but not limited to: tourer caravans, shipping containers, motor vehicles, building materials and equipment, Intermediate Bulk Container (IBC) water tank containers, telegraph poles, miscellaneous vehicle parts and trailers, boat(s), 200 litre steel and plastic drums, plant machinery, tyres, skips, scrap metal, various steel frames, timber pallets, concrete truck mixer drum, and waste.
 - (f) Remove all hardstanding from the land;
 - (g) Upon completion of step (f), cultivate the land where hardstanding has been removed to prepare a seed bed for reseeding then reseed with an agricultural grass seed mix in accordance with best practice for grass reseeding.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matters

1. On my reading, the appellant's initial position in relation to the planning unit/uses taking place on the land amounted to an appeal on ground (b):

namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. No appeal on ground (b) had been made but the Council had nonetheless responded to the points raised in its written evidence in relation to other grounds of appeal. It was agreed at the Hearing that I would treat the points made as an appeal on ground (b), and the discussion at the Hearing proceeded on that basis. I am satisfied that no party was prejudiced by that approach.

The Enforcement Notice

2. In paragraph 3, the notice refers to the breach of planning control alleged as being 'without planning permission' and 'unauthorised'. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation, and therefore the former is the more appropriate. The word 'unauthorised' is superfluous and I shall delete it.
3. The breach of planning control alleged in the notice is, in part, the material change of use of agricultural land to a mixed use comprising of siting of a static caravan for residential use and open air storage. That is a single mixed use. The requirements of the notice split that mixed use into two components: (a) cease use of the land for residential use and (d) cease use of the land for open air storage. I will vary the notice so that the requirements in paragraph 5 match the allegation of a single mixed use at paragraph 3.
4. The requirement at paragraph 5(g) of the notice includes reseeding with an agricultural grass seed mix *in accordance with best practice for grass reseeding* (emphasis added). The latter part of that sentence (highlighted) is not sufficiently precise, insofar as the appellant has no way of knowing from the face of the notice what the Council considers to be 'best practice' in that regard. It was agreed at the Hearing that I would delete the words that I have highlighted above from the requirement.
5. I am satisfied that no injustice would arise from correcting and varying the notice in the above respects, and I shall therefore correct and vary the notice accordingly.
6. I am also mindful that the requirement at paragraph 5(e) of the notice is to remove from the land all items stored within the area edged red on the plan attached to the notice, including, but not limited to..... (the requirement then goes on to list those items to be removed). The wording 'including, but not limited to' could be viewed as not telling the recipient of the notice with reasonable certainty what they need to do to comply with it, and as such is not sufficiently precise.
7. I have tremendous sympathy with the Council in this respect. Having visited the site, and seen for myself the vast amount and variety of material stored there, it is simply not possible to capture in the wording of an enforcement notice every item that needs to be removed in order to comply fully with that notice. The modern approach to the wording of an enforcement notice is that they should not be unduly technical or formalistic. In that context, the wording that the Council has used is, in my view, an acceptable compromise. In any event, the appellant has not raised the issue and has clearly understood what he needs to do to comply with the notice.

The Planning Unit

8. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
9. Applying the principles established in *Burdle* to the facts of this case, the first point to note is that the wider site (including that to which the notice relates) is all in a single unit of occupation. The appellant purchased the appeal site in November 1991 (Land Registry Title HS207469). The appellant then purchased the front portion of the site in January 1993 (Land Registry Title HS221748). The two parcels of land owned and occupied by Mr Jarvis are collectively known as California Fields. Prior to the alleged breach of planning control taking place, the land was in agricultural use and, up until 2002, the southern part of the site was used for rearing pigs.
10. In July 1996, temporary planning permission was granted for the siting of a mobile home, subject to a condition limiting occupation in connection with the agricultural use of the site (Council Ref: 2/96/0401). The permission was renewed in August 1999 (Council Ref:99/01465/PLF) and again in October 2002 (Council Ref:02/05610/PLF). In each case, the temporary permission was tied to the agricultural use of the land through a condition. In addition, there is a partially constructed steel frame agricultural building at the northern end of the site, which appears to relate to a consent granted in 1993.
11. Aerial photographs taken in 2003, 2005 and 2007 respectively show that California Fields (at least that which is covered by the photographs) was open and not divided, other than by a hedge which runs in a broadly east-west direction across the site towards its northern end. There is a sizeable gap in that hedge, through which passes a track linking the mobile home and various outbuildings (including the partially constructed steel frame agricultural building) with the southern part of the site. A later photograph, dated 2012, shows just the northern part of the site but the situation is unchanged.
12. The aerial photograph taken in 2003 shows pig pens to the south of the hedge, primarily to the west of the track, as well as a few to the north of the hedge. It is Mr Jarvis' evidence that he ceased rearing pigs in 2002, but that others then used the land for that purpose. The presence of those pig pens across the site together with the absence of any subdivision of the land indicates that the agricultural use took place across the whole unit of occupation. No other uses are apparent in those photographs and, with the exception of the siting of the mobile home, none are recorded in the planning history of the site. It

therefore appears to me that the primary use of the unit of occupation was for agriculture.

13. The siting of the mobile home was limited to a tightly defined location shown on the plan that accompanied the series of temporary permissions that were granted. The aerial photographs show that the mobile home was not physically separate from the agricultural use that surrounded it. However, the mobile home was initially functionally related to it insofar as the planning permissions granted were all temporary and in each case occupancy of the mobile home was tied to the agricultural use of the unit through a condition. Where there is a functional requirement for someone to live on a farm, the occupation of (in this case) the mobile home is usually regarded as functionally related to the agricultural use of the land but as a separate main use. For the reasons that I set out in detail under ground (b) below, I conclude that neither the stationing of the mobile home nor the stationing of the static caravan added later were lawful before the breach of planning control occurred.
14. I therefore conclude that immediately prior to the breach of planning control alleged in the notice, as a matter of fact and degree, the appeal site fell within category of distinction a) as defined in *Burdle*, in that the unit of occupation comprises a single planning unit where the unit of occupation has one primary use to which any other activities are incidental or ancillary. That primary use was for agriculture. After the breach of planning control occurred, for the reasons that I set out below in relation to the appeals on grounds (b), (c) and (d), the planning unit comprised at least three functionally separate and distinct areas. The southern part of the site remains in agricultural use. The northern part is in a mixed use comprising the siting of a static caravan for residential use and open-air storage. Those two uses are functionally distinct but not physically separated. There is, in addition, an area of land used as caravan site just to the south of that used for open-air storage. However, the Council has elected, as it is perfectly entitled to do, not to direct the notice at the whole planning unit. The land used as a caravan site falls outside the of area subject to the notice, and consequently I do not need to form any conclusions on whether that forms a further use of the unit of occupation.

The appeal on ground (b)

15. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. In this case, this ground of appeal only concerns the residential use element of the breach of planning control that is alleged: there is no dispute that the open-air storage element has occurred.
16. The point made by the appellant is that he has lived at the site continuously since July 1996, initially in a mobile home that was stationed on the land and which benefitted from series of temporary planning permissions. From October 2005 onwards, when the latest temporary permission expired, the appellant lived permanently in the same mobile home but without planning consent. It is therefore the appellant's case that, by 17 October 2015, he had been living in the mobile home for a continuous period of 10 years without planning consent. The appellant therefore contends that the residential use of the site was immune from planning enforcement action from that date. Moreover, because the use has taken place without complying with the condition that ties

occupation of the mobile home to the agricultural use of the unit of occupation, that residential use would be unrestricted and therefore a primary use of the land.

17. In other circumstances, that would normally be a matter to be considered under an appeal on ground (d); namely, that at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. However, in this case, the breach of planning control alleged is the material change of use of agricultural land to a mixed use comprising of siting of a static caravan for residential use and open-air storage. That is therefore the breach of planning control to which the appeal on ground (d) relates, and to which I return below.
18. Nevertheless, if the appellant was able to show that, on the balance of probability, the siting of the mobile home had become immune from enforcement action before the notice was issued, then the breach of planning control alleged in the notice would not have occurred. In that scenario, the breach of planning control would be the material change of use from agriculture and the siting of a mobile home for residential use to a mixed use comprising the siting of a mobile home for residential purposes and open-air storage. That is the basis on which the appeal on ground (b) is raised.
19. The first point to be considered is the status of the mobile home. It was imported to the site in two parts and joined in situ. It had wheels and an axle when it was delivered but it is now standing on cement blocks and any wheels are not in contact with the ground. It is (or has been) connected to a septic tank and all services.
20. The term 'caravan' is defined in s29(1) in the Caravan Sites and Control of Development Act 1960 (1960 Act) as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted'. The Caravan Sites Act 1968 (1968 Act) sets out the size limits with which a caravan must comply. There is no dispute that the mobile home on the site accords with those size limits.
21. The appellant maintains that the mobile home is not capable of being moved without being dismantled, although this appears to be primarily because of its current poor condition. In any event, section 13(1) of the 1968 Act states that a twin-unit caravan shall not be treated as not being (or as not having been) a caravan within the meaning of the 1960 Act by reason only that it cannot lawfully be so moved on a highway when assembled. Neither does the addition of the porch alter the fact that the basic unit to which it is attached is a caravan. The porch, which is currently in a very poor state of repair, is constructed of flimsy plywood with plastic roofing supported by timber beams. Significant sections of the plywood are either in the process of rotting and breaking away, or are missing completely. Only one section of roofing remains in place, with the majority of the area being open to the elements. The door frame has collapsed, with the result that one entire corner of the porch is no longer present, and one of the windows is broken. Consequently, as a matter of fact and degree, I consider that the addition of the porch to the mobile home has not resulted in the creation of a building or structure.

22. It is settled case law that caravans may be stationed for permanent use. Nonetheless, the mobile home is a caravan and, as such, the stationing of the mobile home is a use of the land. It is not, as the appellant maintains, a permanent structure on the land and within the definition of a principal dwelling. The corollary is that the stationing of the mobile home must be considered to constitute 'any other breach of planning control' under section 171B (3) of the 1990 Act, such that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
23. There is no dispute that the mobile home was lawfully occupied until 16 October 2005 through the succession of temporary planning permissions that began in July 1996. The last of those temporary permissions (Council Ref:02/05610/PLF) was subject to a condition that required that immediately after 16 October 2005 the mobile home shall be removed and the site restored. That condition was not complied with, and so from 17 October 2005 onwards Mr Jarvis lived in that mobile home otherwise than in accordance with that permission.
24. This continued to some point in either 2012 or 2013, at which point a new static caravan was brought onto the site¹. It is the appellant's evidence that he intended to live in the static caravan while the mobile home was refurbished. By this time, the roof of the mobile home had begun to leak so Mr Jarvis slept in the bedroom of the static caravan, and used the kitchen, bathroom and other parts of the mobile home for ablutions and meals, etc. The static caravan was not connected to water and sewage at that time so could not be used for any washing, kitchen, bathing or laundry activities. During this time the appellant continued to store his personal belongings in the mobile home.
25. In *Gravesham BC v SSE & O'Brien* [1983] JPL 306, it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It is evident that the mobile home provided some of the facilities required for day-to-day private domestic existence, in terms of cooking, bathing and a place to shelter. But it is equally clear that it did not provide facilities for sleeping, due to the leak in the roof rendering the bedroom unusable.
26. Consequently, in *Gravesham* terms, the mobile home did not provide all the facilities required for day-to-day private domestic existence from 2013 onwards (to give the appellant the benefit of the doubt in terms of when the static home was brought onto the site). I recognise that the stationing of the mobile home itself did not cease: it is still present on the site, albeit in a very poor condition. But, because it did not provide all the facilities required for day-to-day private domestic existence, from 2013 onwards the mobile home could not be regarded as being stationed for residential purposes.
27. The 'red-lined' land in relation to which the succession of temporary permissions was granted was very tightly drawn around the mobile home. The new static caravan was stationed beyond that red-lined area. As such, the static caravan did not replace the mobile home: it was in addition to it. In any event, by the time that the static caravan was brought onto the site, the mobile home was stationed in breach of the condition imposed on the last temporary permission and was not lawful, having been stationed on the site in

¹ The new caravan was not present on the site when the aerial photos of the site were taken on 15 September 2012, and so it must have been after that date.

breach of that condition for only some 8 years. The use of that mobile home for residential purposes therefore never reached the 10 years required to achieve immunity from enforcement action required by section 171B (3) of the 1990 Act.

28. The new static caravan was not required in relation to the lawful and primary use of the land for agriculture, and was purely for residential purposes. As such, as a matter of fact and degree, the stationing of that static caravan resulted in the creation of a new planning unit. The use of that land for the stationing of that static caravan began at the earliest in the second half of September 2012, but the static caravan did not provide all the facilities required for day-to-day living until it was connected to the water supply after September 2018. The use of that static caravan for residential purposes is therefore a long way short of the 10 years required to achieve immunity from enforcement action required by section 171B (3) of the 1990 Act.
29. This is therefore a situation in which neither the mobile home nor the static caravan is lawfully stationed on the site for residential purposes. The lawful reversionary use is for agriculture. The appellant relies upon the judgment in *Deakin v Secretary of State* [2006] EWHC 3402 (Admin) to contend that the use of the static caravan for residential purposes, either in conjunction with the mobile home to September 2018 or exclusively from September 2018, is not a material change of use of this planning unit. Because neither the mobile home nor the static caravan ever achieved immunity from enforcement action, the stationing of the static caravan created a new planning unit which had not become lawfully established, such that the principle established in *Deakin* is not applicable in this case.
30. It follows that, on the balance of probability, the breach of planning control alleged in the notice, which is the material change of use of *agricultural land* to a mixed use comprising of siting of a static caravan for residential use and open storage (emphasis added), has occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

31. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. In this case, the appellant's appeal on ground (c) changed significantly at the Hearing and, as I understood it, related to: (i) the hard standing and (ii) the storage of the appellant's personal effects. The appellant confirmed that he would rely on the appeal on ground (a) in respect of all other matters initially raised under this ground of appeal.

The hard standing

32. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

33. The appellant argues that the application of stone chips to a new or existing driveway and established areas of hardstanding is not operational development for the purposes of Section 55(1) of that Act. Two points flow from this.
34. Firstly, the aerial photographs show that, prior to the land being used for open air storage, the land was predominantly grass when used for agriculture. No significant areas of hardstanding are visible in those photographs. It is therefore not correct, as a matter of fact and degree, to describe the existing hardstanding as comprising the application of stone chips to new or existing areas of hardstanding.
35. Secondly, the existing hardstanding covers an extensive area. I noted on my site visit that in many places the stone chips are compacted, and are not simply comprised of the spreading of stone chips. In any event, as a matter of fact and degree, the spreading of the stone chips (and the compacting of those stone chips) on this scale constitutes an engineering operation and as such constitutes development for the purposes of Section 55(1) of that Act. Section 57 of the 1990 Act states that planning permission is required for development. No such planning permission, deemed or otherwise, is in place for that development.
36. In the alternative, the appellant suggested at the Hearing that the hardstanding is permitted by Class B, Part 6, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, this argument is fundamentally misconceived. The hardstanding was made in connection with a mixed use of the land rather than in connection with the use of the land for agriculture. There is no evidence to show that the hardstanding was reasonably required for the purposes of agriculture within the unit of occupation. In any event, permitted development rights do not apply to mixed uses. Moreover, Article 3(5) of the GPDO provides that the planning permission granted by the GPDO does not apply if the existing use is unlawful. In this case, both the stationing of the mobile home/static caravan and open-air storage were unlawful uses of the land. Permitted development rights are therefore not available under this or any other Part of the GPDO.

The appellant's personal effects

37. The appellant argues that the storage of his personal effects takes place within the curtilage of the mobile home/static caravan and is ancillary to the siting of that mobile home/static caravan for residential purposes. In that respect, the appellant relies on the judgment in *Burford v SSCLG* [2017] EWHC 1493 (Admin), as subsequently distilled by the High Court in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin). One of six propositions identified by the High Court in that later judgment is that a curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration. By reason of its scale and extent, the storage of the appellant's possessions is out of all proportion to the size of the mobile home/static caravan. Consequently, as a matter of fact and degree, I consider that the storage of the appellant's personal effects does not take place within the curtilage of the mobile home/static caravan.
38. It was also held in *Challenge Fencing Ltd* that it is not a legal requirement that the claimed curtilage should be ancillary to the building or land, but that it will be a relevant consideration. In this case, the storage of the appellant's

personal possessions on the land is of a scale, extent and intensity that by its very nature could not reasonably be considered ancillary or incidental to the use of the mobile home for residential purposes. In that context, the Council draws a parallel with the judgment in *Emin v Secretary of State for the Environment* [1989] J.P.L. 909, in which it was held that the question as to whether the use of an outbuilding was incidental to the main dwelling cannot rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. Although the circumstances in this case are not on all fours with the circumstances in *Emin*, the basic principle remains the same and I accept the parallel that is drawn. The storage of appellant's personal effects in this case is therefore not ancillary or incidental to the use of the mobile home/static caravan for residential purposes. This is another reason why, as a matter of fact and degree, the storage of the appellant's personal effects does not take place within the curtilage of the mobile home/static caravan. It also means that, on the balance of probability, the storage of appellant's personal effects on the land itself constitutes a material change in use that requires planning permission.

39. I conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

40. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use alleged had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
41. The appellant accepted at the Hearing that if the appeal on ground (b) failed, then the appeal on this ground could not succeed. That is because, as the appellant accepts, the open-air storage component of the mixed use alleged in the notice only began in or around 2017, some 5 years before the notice was issued and considerably short of the period of 10 years required to achieve immunity from enforcement action required by section 171B (3) of the 1990 Act. Prior to that date, any open-air storage that did take place was purely on an ad hoc basis. In *Davies v SSE & South Herefordshire DC* [1989] JPL 601, the Court of Appeal held that no breach of planning control has taken place during a period where the use was only of a 'casual intermittent and insignificant nature'. The aerial photographs confirm that, prior to 2017, this was the case here.
42. I am therefore satisfied that, on the balance of probability, at the date on which the notice was issued the Council was in a position to take enforcement action in respect of any breach of planning control that may be constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

43. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated three substantive reasons for

issuing the enforcement notice, from which the following main issues are raised:

- whether the mixed use alleged in the notice is appropriate in this location
- the effect of the development on the character and appearance of the area, and
- whether the provisions for drainage are adequate.

44. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (2004 Act) indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. The development plan for this area is the East Riding Local Plan, 2016 (Local Plan).

Whether the mixed use alleged in the notice is appropriate in this location?

45. Policy S4 of the Local Plan states that, outside of a development limit, land will be regarded as the countryside. The policy then goes on to list the forms of development that will be supported in the countryside, in each case where proposals respect the intrinsic character of their surroundings. These forms of development include replacement dwellings, but not open-air storage.
46. The appeal site is located approximately 2km west of the village of Barmby Moor. It is therefore outside of any development limit, and as such must be regarded as being within the countryside for the purposes of Policy S4 of the Local Plan. I recognise that there is built development to the south of York Road directly opposite the appeal site, but that does not alter my conclusion that the site is within the countryside on the application of Policy S4 to the facts in this case. In any event, the appeal site itself sits well back from York Road within an area of open countryside that stretches for a considerable distance to the north, east and west, as well as to the south beyond the built development fronting York Road itself.
47. As a matter of principle, the open-air storage component of the mixed use does not accord with Policy S4 of the Local Plan, that not being a use listed in the policy as being supported in the countryside. In accordance with the wording of Policy S4, that is irrespective of whether that component of the mixed use respects the intrinsic character of the surroundings. I recognise that Policy S4 does support tourism development, which could include the storage of caravans when not in use. However, any benefit in that respect is limited due to its modest scale and in any event is not quantified. The breach of planning control is a single mixed use and it is settled case law that it is not possible to decouple the various components of a mixed use. Therefore, any limited benefit to tourism does not justify the mixed use when taken as a whole.
48. Neither the mobile home nor the static caravan can be properly regarded as dwellings in the context of a permanent structure that could be replaced. In any event, neither the mobile home nor the static caravan is lawful in terms of providing residential accommodation. As a consequence, granting planning permission would in effect be to grant planning permission for an isolated dwelling, contrary to paragraph 80 of the National Planning Policy Framework (Framework). None of the exceptions to that principle set out in that paragraph apply in this case. Moreover, overarching all the above, it is not

possible to de-couple the residential component of that mixed use. For all these reasons, even though Policy S4 is in principle supportive of replacement dwellings in the countryside, that support does not apply in this case.

49. I conclude that the mixed use alleged in the notice is not an appropriate use in this location. I therefore conclude that the mixed use is contrary to Policy S4 of the Local Plan.

Character and appearance

50. The appeal site sits within an extensive area of open countryside. The character of that area is derived from the pattern of relatively small fields, many enclosed by hedges (some with trees embedded) and interspersed with pockets of woodland. Built development is sporadic and, with the exception of the development on the south side of York Road, largely takes the form of isolated farmsteads and agricultural buildings. The appeal site has no visual connectivity with the development on the south side of York Road. Overall, the character of the area is overtly rural.
51. The appeal site sits well back from York Road and even then the mixed use takes place on the northern part of the site, beyond the hedge that runs in an east-west direction across the site. There are no public rights of way across the site or close to it. The part of the site on which the mixed use is taking place is therefore not conspicuous from any public vantage point.
52. The open-air storage component of the mixed use extends across a considerable area. There are numerous shipping containers, but in addition there is a plethora of items stored in the open. These include numerous cars, a disused Fire Engine, a boat, and several JCB-type vehicles. Some of the vehicles are placed on top of containers or stacked pallets. There are also piles and/or stacks of building materials, timber pallets, oil drums and at least one skip. There is an area where caravans are stored, and whilst there was only one caravan present at the time of my site visit, the aerial photographs reveal that on occasions up to nine caravans have been stored there. There is also an isolated patch of waste material that has been dumped on the site.
53. In both character and visual terms, the site is akin to a scrap yard. I am fully aware that the site cannot be seen from the public domain. However, the key to understanding the effect of any development on the landscape is to assess the wider landscape in which the site sits, and not just of the site itself. That is the approach I have adopted here. Looked at in this way, the open-air storage component of the mixed use is wholly incongruous in this rural setting and is seriously harmful to the intrinsic character and appearance of the area.
54. The residential component of the mixed use, which is the static caravan, is also not visible from the public domain. In isolation, the stationing of that caravan does not itself have a significant effect on the character and appearance of the site or surrounding area. However, I am mindful that the use of that static caravan for residential purposes potentially brings with the normal activity and paraphernalia associated with a residential use. That would not be consistent with the surrounding rural landscape, in which residential uses do not form part of the established character and are generally restricted to isolated farmsteads.
55. I conclude that the mixed use alleged in the notice unacceptably harms the character and appearance of the area. I therefore conclude that the

development is contrary to Policies ENV1 and S4 of the Local Plan which state, amongst other things, that development will be supported where it achieves a sense of place and respects the intrinsic character of their surroundings. The mixed use alleged in the notice does neither of those things.

Drainage

56. A significant part of the site which is used for open-air storage is covered in hard surfacing. No provision has been made for drainage to accommodate the run-off from that hard surface. The appellant maintains that the hard surface is permeable but I am not convinced that this is the case: at the time of my visit, conducted following a period of heavy rainfall, there were several patches of standing water on the site. Moreover, I noted during my site visit that there were a considerable number of (old) vehicles on the site, as well as oil drums and other potential sources of contaminants (such as the waste deposited on the site). I therefore cannot discount the possibility that fuel, oil and other contaminants from these vehicles and waste could find its way into the ground through water run-off and ultimately into a watercourse.
57. There is no technical evidence before me in this respect. In the absence of that evidence, I have no confidence that this matter could be adequately addressed in the long term by the imposition of a suitably worded condition. The site is not previously developed land and there is no evidence to suggest that the land, which was previously in agricultural use, was contaminated before the mixed use commenced. I will accordingly adopt the precautionary principle.
58. I conclude that the provisions for drainage are not adequate. I therefore conclude that the mixed use alleged in the notice is contrary to Policy ENV6 of the Local Plan which, in general terms, provides that environmental hazards, such as groundwater pollution and other forms of pollution, will be managed to ensure that development does not result in unacceptable consequences to the environment.

Other considerations

59. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, in my view the harms identified are intrinsic to the breach of planning control that has occurred and could not be overcome by the imposition of conditions. In short, the scale, nature and extent of the mixed use is simply too great for it to be mitigated through the imposition of conditions. I will, however, return to the imposition of conditions in another context below.
60. The personal circumstances of the appellant are a relevant material consideration in this case. It is neither necessary nor appropriate for me to rehearse those circumstances in detail here. It is sufficient to note that Mr Jarvis has experienced two extended stays in hospital in recent years. As a result of his medical condition, Mr Jarvis is not able to earn a living through undertaking work himself. Moreover, he only receives a modest income from the storage of caravans on his land. The full details of Mr Jarvis' personal circumstances are known to the Council and are not disputed. The appellant's personal circumstances are a material consideration to which I attach significant weight.

61. The dismissal of this appeal would result in Mr Jarvis losing his home. This would interfere with his rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
62. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by Mr Jarvis.
63. The protection of the countryside, protection against pollution and the direction of development to appropriate locations in the Borough are all legitimate planning policy objectives. I have found that the appeal site is not an appropriate location for the breach of planning control that has occurred, and that the mixed use alleged in the notice causes significant harm to the character and appearance of the area. I am also unable to discount the possibility that the breach of planning control has resulted in groundwater and/or other forms of pollution because of the inadequate provisions for drainage. I have found that the breach of planning control alleged in the notice is not in accordance with the development plan in all those respects, contrary to Section 38(6) of the 2004 Act. The dismissal of this appeal, and upholding the enforcement notice, would therefore be in the public interest.
64. Against this, Mr Jarvis has been resident on the site since July 1996. This has therefore been his home for some 27 years now. Mr Jarvis made it very clear at the Hearing that he does not wish to leave his home. I am acutely aware that Mr Jarvis is surrounded by his personal possessions, and what that means to him. I am also mindful that Mr Jarvis has endured two extended stays in hospital in recent years, and that his current condition is debilitating. I therefore fully understand that having to leave his home of 27 years would be emotionally difficult for Mr Jarvis and, based on correspondence that I have seen from his medical team, could be damaging to his health too.
65. The Council explained at the Hearing that it had offered alternative accommodation to Mr Jarvis, at which his medical needs could be catered for. I recognise that there are financial issues around that, and Mr Jarvis made it very clear that he did not want to move into a new home. It is not part of my remit to determine what is in Mr Jarvis' best interests in that respect. Nevertheless, there is a potential option for alternative accommodation which, it seems to me, Mr Jarvis has not fully explored and has not taken up. That is a material consideration that I must take into account.
66. In balancing the appellant's rights under the HRA against the wider public interest, I am not persuaded that Mr Jarvis' personal circumstances outweigh the harm to the public interest, to the extent that a permanent planning permission should be granted. The harms that I have identified are just too great. In the context of a permanent permission, I am satisfied that the relevant planning policy objective could not be achieved by means which interfere less with the appellant's rights and could not be met by a less intrusive action. As such, the requirements of the notice are the minimum

necessary to achieve the planning policy objective. I therefore conclude that the interference with Mr Jarvis' rights under the HRA is in the public interest, and as such is both justified and proportionate in relation to the breach of planning control that has occurred.

67. The balance does, however, change when a temporary and/or personal planning permission is considered. The Planning Practice Guidance (PPG) advises that a temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period. In this case, it is Mr Jarvis' personal circumstances that may change. The PPG also advises that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. In view of the significant weight that I have attached to Mr Jarvis' personal circumstances, this is one of those exceptional occasions.
68. In the scenario of a temporary and personal permission, the serious harm that I have identified would only persist for a finite period of time. The mixed use could be required to cease and the land restored to its former condition through the imposition of a planning condition. Furthermore, planning conditions could be imposed to control the open-air storage component of the mixed use: for example, by restricting the height to which materials could be stacked. In that scenario, Mr Jarvis could continue to live in his home for a further period: the Council considered that this period should be no longer than three years. That would have benefits for his health and general well-being, a consideration that accords with paragraph 92 of the Framework. His personal circumstances could then be re-assessed at the end of that period.
69. For the same reasons that I have set out above in relation to a full permission, a temporary and personal permission across all of the land to which the notice relates would still not be in the public interest, given the extent of the harm caused by the breach of planning control. But there is a further consideration here.
70. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to any part of the land to which the notice relates. It is settled case law that the components of a mixed use are not capable of being de-coupled. The option of avoiding any interference with the rights held by Mr Jarvis under the HRA by enabling him to remain living on the site through granting either a full or a temporary permission for just the stationing of the static caravan is therefore not open to me.
71. It is, however, open to me to grant either a full or a temporary/personal permission in relation to the mixed use on only part of the land to which the notice relates. For the reasons set out above, I consider that a full permission would not be appropriate in this case even if it related to only part of the site. Nonetheless, the lesser harm resulting from a temporary permission for part, or parts, of the site would be acceptable.
72. In that context, the appellant has produced a plan showing the mixed use in three separate parcels on the land. The first is the location of the static caravan. The 'orange line' on that plan is drawn tightly around the static

caravan, such that there is no curtilage associated with it. The second is the storage area for the touring caravans, in the same position as existing. The third is labelled as an area of B8 storage for the appellant's effects, albeit that the B8 use alleged as part of the mixed use is for open air storage. In practice, the labelling on the plan makes no difference in that respect: the appellant could, if he chose to do so, limit the open-air storage to his personal effects.

73. The Council makes the point that the area shown for B8 storage is not sufficient in size to accommodate all of what the appellant considers to be his personal effects. That may well be true, but restricting the area for B8 open-air storage to that shown on the plan would force the appellant to make some tough choices as to what personal effects he stored there. That then becomes entirely a matter for Mr Jarvis to decide. The salient point is that the harm caused by the mixed use would be substantially reduced (but not overcome), and would be only for a finite period, at the end of which it would be required to cease and the land restored.
74. Section 180 (1) of the 1990 Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the requirement in the enforcement notice to cease the mixed use will be overridden by the grant of the temporary/personal permission, but only in relation to those areas identified on the plan submitted by the appellant. In relation to all the other parts of the land to which the notice relates, the notice and the requirements to comply with it will still have effect.
75. In the scenario of a temporary and personal permission relating to only those parts of the land identified in the plan provided by the appellant, the harm to the public interest would be outweighed by the interference with the rights held by Mr Jarvis under the HRA. In that scenario, granting a temporary and personal permission, but also subject to other conditions, would be a proportionate response to the breach of planning control that has occurred.
76. I have also had due regard to my duties under the Public Sector Equality Duty (PSED) that arises from section 149 of the Equality Act 2010. For the reasons set out above in relation to the HRA, I am satisfied that a temporary and personal permission relating to only those parts of the land identified in the plan provided by the appellant accords with the PSED.

Conditions

77. In addition to conditions relating to a temporary and/or personal permission, it is necessary to restrict the use to those areas shown on the plan submitted by the appellant. A condition restricting the height to which items/material may be stacked is necessary. It was agreed at the Hearing that a maximum height of 3 metres would be appropriate. A condition limiting the number of caravans stored the specified area is also necessary: it was agreed at the Hearing that this number should be limited to 9 caravans. In view of the location of the site in open countryside, a condition requiring details of any external lighting to be submitted to and approved by the Council is necessary.
78. Given that the permission would be personal to Mr Jarvis anyway, I am not persuaded that a separate condition tying the residential use of the caravan to the surrounding commercial activities would be necessary, or indeed

enforceable. No concerns have been raised by the Highways Authority in terms of highway safety or highway capacity, and therefore a condition restricting the number/type of vehicular movements would not be necessary. Similarly, given that there are no residential properties nearby, a condition restricting the hours of operation would not be necessary.

79. A condition was proposed that the hardstanding should be made permeable to allow water run-off. The possibility of a condition requiring the submission of a drainage scheme was also discussed at the Hearing. The difficulty in imposing these conditions is that, in the context of a temporary planning permission, it would require significant investment on works that would not be required once the mixed use ceased at the end of the temporary period. That would be unreasonable, particularly given that the majority of the hardstanding on the site would be removed in any event when the use ceases. Consequently, on balance, I consider that imposing those conditions would not accord with tests set out in the Framework and the PPG.

Conclusion on ground (a)

80. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. Having weighed the factors in support of granting a permanent permission on the deemed planning application, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted in full for the matters stated in the notice.
81. However, there is a compelling case for granting a temporary permission that is personal to Mr Jarvis, but which relates only to those specific areas identified on the plan submitted by the appellant and which is attached to this Decision. I conclude that planning permission ought to be granted in those terms, subject also to the conditions identified above.

The appeal on ground (f)

82. The appeal on this ground is that the requirements of the notice exceed what is necessary. In this case, given that a temporary/personal planning permission will be granted in relation to some parts of the land to which the notice relates, this ground of appeal now only relates to the land outside of that identified in the plan submitted by the appellant and which is attached to this Decision.
83. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of 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 or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice (as I propose to vary them) include to cease the mixed use, to remove all the hardstanding and reseed the land with an agricultural grass seed. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

84. Most of the case initially made by the appellant in relation to ground (f) is covered in my conclusions on the other grounds of appeal. The matters raised at the Hearing on this ground of appeal all concerned the ability of Mr Jarvis to comply with the requirements of the notice in terms of requiring assistance to do so as a result of his medical condition. Those are considerations that more properly fall to be considered under ground (g) below.
85. The sole remaining ground to be considered is that, in the appellant's view, it is not necessary to re-seed any areas of hard standing that are required to be removed. However, as set out in Section 173(4) of the 1990 Act, the purposes which an enforcement notice may seek to achieve include restoring the land to its condition before the breach took place. In this case, aerial photographs show that the land was covered in grass when in agricultural use and before the breach of planning control occurred. It follows that it is necessary to re-seed any areas of hard standing that are to be removed in order to restore the land to its condition before the breach took place, and therefore remedy the breach of planning control that has occurred.
86. I have considered whether there are any other suitable alternatives to the requirements set out in the notice (as I propose to vary it) which would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

87. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is 12 months.
88. It was apparent from the discussion at the Hearing that the Council had grappled with the period of compliance to be imposed in this case. I fully understand why.
89. There are several factors in play here. The first and most significant is Mr Jarvis' medical condition, which prevents him from carrying out any of the remedial work himself and limits the time on which he is able focus on supervising that work. He is therefore totally reliant on outside help to comply with the requirements of the notice, which in turn means that he does not have full control over the timescale for doing so. I also recognised that complying with the notice requires removing, or at least moving, many of Mr Jarvis' personal possessions. Understandably, and quite rightly, he wants to retain control over that and to supervise it.
90. Then there is the sheer scale of the task in hand. It transpires that Mr Hall has already removed several vehicles from the site on Mr Jarvis' behalf: that had not even scratched the surface. The number of cars and other vehicles still to be removed is significant. Some may be driveable, but it was obvious from my site visit that many are not. Some of the other items to be removed, such as the shipping containers, are bulky and/or heavy and will likely require specialist machinery to be removed and transported off site. The situation is further complicated by the fact that some of Mr Jarvis' possessions may have to be removed from the area identified on the plan attached to this Decision before others that he wishes to retain can be moved there.

91. All of that needs to be accomplished before the hardstanding can be removed, which itself will be a time-consuming operation. Only then can the land be re-seeded with grass and the notice fully complied with.
92. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must have regard to harm caused by the mixed use of the land subject to the enforcement notice. There are no neighbouring residential properties that are affected by the use and there is no evidence that the use is causing immediate harm to the environment in terms of pollution. There is no risk to highway safety. There is, therefore, no imperative for the breach of planning control to be remedied quickly. The harms that I have identified are of a more long-term or strategic nature, but are no less important for that. I acknowledge that the period of compliance arrived at by the Council recognises this and already takes that into account.
93. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice does not outweigh the private interest in extending that period of compliance. This is compounded by the practical difficulties that the appellant will face in doing so. I am, therefore, persuaded that there is a need to extend the period for compliance with the notice and consider that a period of compliance of 18 months would be a reasonable and proportionate response to the breach of planning control that has occurred.
94. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

95. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning a temporary and personal permission for the mixed use on that part of the land that is identified in the plan submitted by the appellant and which is attached to this Decision, but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the other parts of the land. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.

Formal Decision

96. It is directed that the enforcement notice is corrected by:
- In paragraph 3 of the notice, deleting the word 'unauthorised'
97. It is directed that the enforcement notice is varied by:
- deleting paragraphs 5(a) and 5(d), and replacing them with a single paragraph saying 'Cease the mixed use of the land comprising of siting of a static caravan for residential use and open storage.'
 - in paragraph 5(g), deleting the words 'in accordance with best practice for grass reseeded'
 - in paragraph 6, deleting the words 'twelve (12) months' and replacing them with 'eighteen (18) months'

98. Subject to the correction and variations, the appeal is allowed insofar as it relates to the land edged orange (Location of static caravan), edged green (Touring caravan storage area) and edged blue (Area of B8 storage for Appellants effects) on the plan titled 'Areas of Proposed Use' attached to this Decision, where permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for a mixed use comprising of siting of a static caravan for residential use and open-air storage at Land at California Fields, York Road, Barmby Moor, East Riding of Yorkshire YO42 4HT, and subject to the following conditions:
- 1) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this Decision, and shall be personal to Mr Richard Jarvis. When the premises cease to be occupied by Mr Richard Jarvis, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall be discontinued, all materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority. That scheme of work shall be submitted to the local planning authority within 3 months of the date of this permission, and shall include the timetable within which the land must be restored to its former condition.
 - 2) The use hereby permitted shall only take place on those areas identified on the plan titled 'Areas of Proposed Use' attached to this Decision, and only for the purposes identified on that plan, and on no other part to the site.
 - 3) Items stored on the site shall not be stacked or deposited above a height of 3 metres measured from ground level.
 - 4) The number of caravans stored in the specified area shown edged in green on the plan titled 'Areas of Proposed Use' attached to this Decision shall not exceed nine (9) at any one time.
 - 5) Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to installation. The external lighting shall be carried out in accordance with the approved details.
99. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to all the other land shown edged red on the plan attached to the notice, where permission is refused for a mixed use comprising of siting of a static caravan for residential use and open storage, and the laying of hardstanding to facilitate the change of use, at Land at California Fields, York Road, Barmby Moor, East Riding of Yorkshire YO42 4HT on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR

APPEARANCES

For the appellant

Mr Richard Mark Jarvis

Appellant

Mr Stuart Hall

Mr Craig Burman

Partner, Scofield Sweeney

For the Local Planning Authority

Ms Hazel Walsh

Planning Enforcement Team
Leader

Mr Gareth Jones

Principal Planner



Plan

This is the plan referred to in my decision dated: 11 September 2023

by **Paul Freer BA (Hons) LLM PhD MRTPI**

**Land at: California Fields, York Road, Barmby Moor, East Riding of Yorkshire
YO42 4HT**

Reference: APP/E2001/C/22/3308911

Scale: Not to scale

