



Appeal Decisions

Site visit made on 3 August 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal A Ref: APP/X3540/C/22/3303106

Land at The Paddock, 4 The Street, Lound, Suffolk NR32 5LR

- 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 Dominic Smith against an enforcement notice issued by East Suffolk Council.
 - The enforcement notice was issued on 16 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the unauthorised material change of use of Land from agriculture to a residential use, including the stationing of a mobile home for residential use purposes.
 - The requirements of the notice are to:
 1. Permanently cease the residential use of the Land.
 2. Permanently cease the use of the Land for the stationing of a mobile home for residential purposes.
 3. Permanently remove the mobile home and any associated fixtures and fittings from the Land.
 4. Restore the Land to its condition immediately prior to the unauthorised use, referred to in paragraph 3 above, taking place by reseeding with grass or turfing the Land.
 - The period for compliance is 4 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/X3540/C/22/3303066

Land at The Paddock, 4 The Street, Lound, Suffolk NR32 5LR

- 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 Dominic Smith against an enforcement notice issued by East Suffolk Council.
- The enforcement notice was issued on 16 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the creation of a new access and driveway, erection of an outbuilding, installation of a green utility supply unit a beige cabinet, concrete hardstanding, block paving, wooden steps, decking and a pergola ("the Unauthorised Development").
- The requirements of the notice are to:
 1. Permanently remove from the land the access and driveway, outbuilding, green utility supply unit, beige cabinet, concrete hardstanding, block paving, wooden steps, decking and pergola ("the unauthorised Development")
 2. Restore the land to its condition immediately prior to the unauthorised works referred to in paragraph 3 above taking place by reseeding with grass seed or turfing the Land.
- The period for compliance is 4 months after this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2) (a) and (b) of the Town and Country Planning Act as amended.

Formal decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of Requirement 4's wording and its replacement with the following:

"Following compliance with steps (ii) and (iii) above, return the land to its former levels by the uncovering of the original soil horizons and profiles, and for a complete soil covering to be achieved capable of supporting a 'recovery' grass sward."
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. It is directed that the enforcement notice be corrected by the deletion of Requirement 2's wording and its replacement with the following:
4. "Following compliance with step (i) above, return the land to its former levels by the uncovering of the original soil horizons and profiles, and for a complete soil covering to be achieved capable of supporting a 'recovery' grass sward."
5. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

6. The appeals concern whether or not works, constituting implementation, had commenced within the three year statutory time period in association with a proposed development involving an eco-house that had been granted planning permission in June 2017.
7. The appellant's case is his assertion that such works actually commenced in February 2020, but were then suspended and significantly delayed due to Covid. The Council dispute this, being of the view, instead, that the planning permission had lapsed by the expiry date of 29 June 2020 before any works of significance took place. The Council also takes issue with the presence of a mobile home brought onto the site, and in use for residential purposes. Other works constituting operational development, for which the Council contends planning permission is required but has not been granted, have also taken place.
8. In the circumstances the Council saw it expedient to serve two enforcement notices; one against the change of use of the land, and the other relating to the operational development works undertaken.

Preliminary Matters

9. The appellant, in his submissions, is not only claiming that the specified breaches of control, thereby unauthorised development, have not taken place as a matter of fact, but also that, in claiming that works constituting implementation commenced before the expiry date, no new planning

permission was necessary in the circumstances. This would be the basis of an appeal under ground (c) and, although not lodged specifically, I shall consider this claim, accordingly.

10. Turning to the mobile home sited on the land, Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO) allows for the provision on land of buildings required temporarily in connection with, and for the duration of, operations being or to be carried out on that land. Such buildings should, of course, be removed when the operations have been carried out. Accordingly, if planning permission DC/17/1917/FUL can be shown to not have expired unimplemented then the mobile home could remain for the duration of the eco house's construction.
11. In instances such as this where the main parties dispute whether works have been undertaken that would reasonably constitute implementation of a planning permission, the usual approach is for a s192 application to be submitted to the Council. In fact, I note that the Council suggested this course of action in its e-mail of 7 January 2022.
12. The aim would be to show that the development can proceed as the necessary preparatory works have already been carried out. In essence, if the applicant can provide precise and unambiguous evidence to prove, on the balance of probability, that this was the case then the Council would issue a lawful development certificate (LDC) which would effectively confirm that the planning permission had already been partially implemented and can proceed, accordingly. In the event the appellant chose not to make an application for such.
13. It is noticeable that the papers accompanying the current appeals do not include any statutory declarations or other official documents to corroborate the appellant's claims that excavations allowing for the laying of water pipes and necessary ground works commenced in February 2020. In fact the Council refers to information received from the appellant in November 2021 regarding an engineer's work schedule which mentions dates that were incorrect.
14. It is also noted that, regarding the operational development carried out, the Council hold no Building Control records.

Case Law

15. At my site visit I witnessed soil vent pipes, and cables for utility points protruding from the ground. The vehicular access point and driveway had also been completed.
16. Section 56, subsection 2, (4)(c) of the 1990 Act as amended indicates that a material operation means, amongst other things, the laying of any underground main or pipe to the foundations, or part of the foundations, of a building, or to any such trench as is mentioned in (4)(b) above.
17. Very little is needed to 'initiate development' under s56(1). In the case of *Spackman v Secretary of State and Thamesdown Borough Council* [1977] the laying of drainage pipes was held to be a 'specified operation' even though the foundations' trenches did not exist. S56(2) provides that 'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

18. By the judgement in *Malvern Hills DC v SSE* [1982] the Court of Appeal held that the test for commencement is not the quantum of work undertaken, but whether the work was related to the planning permission involved. However, by way of *Connaught Quarries Ltd v SSETR & East Hants DC* [2001] the beginning of a material operation under s56(2) and (4), for the purposes of keeping a permission alive, has also to be more than de minimis.
19. In the current appeal case I consider that sub-section (c) can reasonably be interpreted to mean a main or pipe which is for the purpose of serving the building permitted.
20. I consider the works now carried out in connection with the approved eco house are material and, if it could be demonstrated that they had been undertaken by 29 June 2020, together these would confirm that implementation had been effected.

Matters concerning the enforcement notices

21. There is a requirement on both notices that the land be re-seeded or turfed. This represents a positive step which goes beyond the lawful scope of enforcement notice and I am, therefore, deleting this requirement. In instances such as this where agricultural land is involved the objective of restoring land to its previous condition can be achieved by requiring for earthworks to be carried out so as to support a 'recovery' grass sward. This is consistent with the Environment Agency's approach to such matters, and I shall re-word this requirement, accordingly.

Appeals A & B

The appeals on ground (b)

22. An appeal on ground (b) is that the breach alleged has not occurred as a matter of fact. The evidence is on the balance of probability and the onus is on the appellant to prove his or her case.
23. For this particular ground, the appellant would be accepting that the allegations in the enforcement notices taken together - a material change of use for residential purposes involving the stationing of a mobile home, and associated operational development - both constitute breaches of planning control but have not occurred. In other words on 16 June 2022, the date the notices were issued, neither of these breaches had taken place.
24. Clearly, this is not the basis of the appellant's case and, moreover, from both main parties' claims, and on the evidential facts, this does not represent the actuality of the situation.
25. Accordingly, the requirements for ground (b) to succeed on both Appeals A and B cannot be met, and both must fail.

The appeals on ground (c)

26. An appeal under ground (c) is that no planning permission is required for the works carried out on the basis that either planning permission had already been granted for the same or that those works fall within the parameters of The Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO).

27. In terms of Appeal A this is exactly the crux of the matter. If the necessary preparatory works had been carried out before the planning permission expired in June 2020 then the development could proceed and, by way of the entitlement for temporary buildings to be installed during the construction process, by way of the GPDO the mobile home brought onto the land would have been considered as permitted development throughout the duration.
28. Insufficient proof has been put forward to support the appellant's case on this arguable point.
29. The additional works the subject of Appeal B go significantly beyond the above allowance. In the absence of any householder permitted development rights – they do not apply to temporary buildings (in this case the mobile home known as 'The Lodge') – they constitute development that requires the benefit of planning permission. Although the vehicular access and driveway were incorporated into planning permission DC/17/1917/FUL, if this had expired, unimplemented, then such operational development would also be unauthorised.
30. The appellant says that works commenced in February 2020 but were then suspended the following month until September 2021. Indeed, the Council has provided a series of photographs dated 12 November 2021 which were taken as part of a site visit by officials. These show that the mobile home had been brought onto the land and positioned to the south of the site, at the opposite end to where the eco house was to be positioned, along with the black structure referred to by the Council as 'the outbuilding'. What had been a green field had been cleared and hard-core laid and the piping and cables which I witnessed on my recent site visit were evident. In addition, a vehicular access had been created and the driveway constructed.
31. This contrasts sharply with the Google images of the site from April 2001 which show a green field, somewhat overgrown and a wooden farm-type gate still in place – in fact, this was still in situ in August 2021 – and this was consistent with the arrangement apparent from the previous images taken in July 2019 and April 2012. Further, from the Council's Written Statement it is said that a planning officer visited the site on 20 June 2020 and reported back that there was no evidence that works had commenced on the land.
32. It appears, therefore, that whilst the appellant's indication that works re-commenced in September 2021 is correct given the site's development by the November, there is absolutely no indication that any works material to the planning permission's implementation had been effected prior to the September. Further, for the same reason, none of the operational development cited by the Council would have been in place four years before the enforcement notice's issue in June 2022, and none can, therefore, enjoy immunity from planning control. In the circumstances the Council is quite entitled to target the various buildings, structures and items as unauthorised development requiring the benefit of planning permission.
33. In the absence of anything compelling to suggest otherwise, the appellant's case has not been proved. Accordingly, the ground (c) appeals for both Appeals A and B do not succeed.

The appeals on ground (a) – The deemed planning applications (DPAs)

Main Issues

34. The main issues are:

- 1) the location of the appeal site and whether, with regard to the Council's spatial policy, it is a suitable location for new residential development;
- 2) the effect of the development on the character and appearance of the surrounding area and landscape; and
- 3) whether the setting of St John the Baptist's Church, a statutorily listed building, is affected by the development and, if so, to what degree.

Reasons

Location

35. Lound is classified in the Waveney Local Plan, 2019 (WLP) as a 'smaller village', although the appeal site itself is identified as falling outside the identified settlement boundary, and is therefore considered to fall within the countryside. Within the villages WLP policy WLP7.1 says that housing requirements will be provided by site allocations in both the WLP and Neighbourhood Plans.
36. The Lound with Ashby, Herringfleet and Somerlayton Neighbourhood Plan 2014-2036 (NP) was adopted in July 2022 and allocates a neighbouring piece of land to the north, known as 'Land east of The Street' as suitable for new housing. This reflects Policy WLP policy WLP7.12 regarding Land east of The Street, Lound whereby the site is allocated for the small scale development of up to a maximum of 10 dwellings.
37. WLP policy WLP8.7, concerned with small scale development in the countryside, says that up to three dwellings will be permitted where the site constitutes a clearly identifiable gap within a built up area. The site lies just to the north of some period age dwellings which extend round into Church Lane, and there is a series of terraces of inter-war housing on the west side of The Street, opposite the site. However, the east side is more rural in character and, at least for the time being, it cannot be seen as an infill site where the said policy might apply.
38. Admittedly, granting planning permission for the eco-house was contrary to the Council's spatial policy but, here, the Council cites the high quality design of the proposed sunken dwelling which it considered would not adversely impact on the landscape.
39. On the above basis I am satisfied that, subject to other material considerations that might arise, the development plan, comprising of both the WLP and NP documents, do not identify the appeal site as appropriate for residential development in general.

Character and appearance

40. WLP policy WLP8.35 is concerned with landscape character and requires that development proposals demonstrate their location, scale, form, design and materials will protect and, where possible, enhance, the special qualities and local distinctiveness of the area and the visual and historical relationship

between settlements and their landscape settings. The emplacement of a mobile home does not necessarily demonstrate high quality design which can show a clear understanding of, and respond to, the form and character of the built, historic and natural environment. Indeed, from my site visit and observations of the site's surroundings the development undertaken on the site has had little regard to the prevailing pattern of development and the immediate townscape.

41. That is not to say that the totality of the development undertaken does not represent, in itself, an orderly arrangement, and there is still a general feeling of openness due to the size of the site. However, the expanse of shingle, albeit interspersed with small areas of turf, is not in keeping with the vernacular.
42. Given the incongruity, but also on balance, I consider that the mobile home and the other elements of this modern development do not reflect local character nor respond to the site's contextual setting.
43. Accordingly, I conclude that the development is not respectful of local character and conflicts with the objectives and requirements of WLP policies WLP8.29 and WLP8.35.

Effect on setting of Church

44. The Church of St John the Baptist is a Grade II* listed building. It is accessed off Church Lane and is situated some distance east of the site. In the event of development, or proposals for such, I have a particular duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the desirability of preserving the listed building's setting, along with its features of special architectural and historic interest.
45. WLP policy WLP8.37 'Historic Environment' requires that development should seek to conserve or enhance Heritage Assets and their settings. It also says that all development proposals which have the potential to impact on Heritage Assets or their settings should be supported by a Heritage Impact Assessment prepared by an individual with relevant expertise.
46. Paragraph 199 of the National Planning Policy Framework (the Framework) says that the more important the asset – and clearly the Church is of high importance – the greater the weight that should be given to the asset's conservation. Further, paragraph 200 of the Framework says that any harm to the significance of a designated heritage asset should require clear and convincing justification.
47. No such impact assessment has been produced by the appellant. That said, given the marked distance to the Church and the fact that the mobile home is only of single-storey height I am not fully convinced that the Church's setting has been impacted upon or that long views towards the Church have been significantly interrupted. Nonetheless, as I am refusing the DPAs for other substantial reasons it is not necessary that I explore this matter further.

Other Considerations

48. Regarding the Suffolk Coast Habitats sites a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) is in place for which it has been established that new residential development within 13km of the Habitats sites – known as the Zone of Influence (ZOI) will contribute to in-combination

recreational disturbance impacts. Accordingly, under the direction of Natural England (NE), so that new residential development does not adversely impact on the integrity of the Habitats sites, a financial contribution is required from the developer or applicant by way of a s106 Agreement or Unilateral Undertaking. This is to be secured, prior to the determination of the application.

49. In the case of the appeal development the requisite contribution is £321.22 per dwelling. However, in this particular instance, it has not been a consideration for the appellant.
50. With no Habitats Regulations Assessment to demonstrate that the development's impact would be mitigated through other measures, NE's directive, through the Council, is to refuse planning permission. This is consistent with the advice in paragraph 180 of the Framework.
51. By letter dated 26 July 2022 from Accounts Herts Property Consultants, representing the appellant, it was put that he is no longer able to work as he has been registered as fully disabled. That may be the case but no official evidence has been produced to confirm as such.
52. The letter also indicated that he is no longer able to fund the eco-house development and wishes to continue living in The Lodge, which will be his main dwelling. This is consistent with the decking, paving, pergola and fencing erected close to the mobile home, thereby consolidating the use.
53. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
54. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
55. If the appellant is living on the site it should be regarded as his home. However, I note that there was no attempt to regularise the planning position until the Council served the enforcement notices and the appeals ensued.
56. In the circumstances I find there was a legitimate aim in the Council's decision to issue the enforcement notices, that being to control the site's development. In a nutshell, the mobile home was ostensibly brought onto the site to facilitate the construction of the eco-house. However, given that the mobile home has been complemented by the other associated developments, going way beyond that of temporary accommodation, it is arguable whether the appellant had genuine intentions of implementing the planning permission, or whether the main intention was to primarily take advantage of the GPDO entitlement.
57. In the event the Council has effectively been by-passed and I am satisfied that its decision to take formal enforcement action was necessary and proportionate given the particular circumstances.
58. Regarding disability, the appellant has not lodged any appeal that the compliance period of four months is unreasonably short, given the

inconvenience that could result. As such, I am unable to consider this matter. In the circumstances, and should the four months prove too onerous due to upheaval, it is open to the appellant to make a formal approach to the Council as to maybe extending the period. However, should this arise, it is a decision ultimately for the Council to reach and is not for me to address.

Planning Balance

59. In weighing up all the relevant factors involved it seems clear that those works necessary to constitute implementation of the approved residential development had not been carried out by June 2020 when the planning permission expired. In fact, there is nothing to suggest that any site works of significance took place until September 2021 when the mobile home was brought onto the land and the various associated operational development subsequently carried out.
60. With the evidence before me indicating that the planning permission had expired, unimplemented all elements of the developments targeted by both enforcement notices had been undertaken without the requisite planning permission(s) and were therefore unauthorised.
61. Aside from the development's effect on the local Church, which is arguable, I have found that there are clear policy grounds for refusing retrospective planning permission in its entirety and the appellant's representations are not so convincing as to amount to material considerations that might outweigh the policy objection.
62. I have also had regard to the appellant's claims that he is the victim of circumstances and that a certain councillor has caused him particular problems. However, this does not have any bearing on the planning position at the site and the unauthorised development that has taken place.

Conclusion

63. For the reasons given above I conclude that neither Appeal A nor Appeal B should succeed. Both appeals are dismissed and I shall thereby uphold both enforcement notices and refuse to grant planning permission on the deemed applications.

Timothy C King

INSPECTOR