



Appeal Decisions

Site visit made on 28 June 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 September 2023

Appeal A Ref: APP/F2360/C/22/3302611

Appeal B Ref: App/F2360/C/22/3302612

Penwortham Residential Park, Park Road, Stricklands Lane, Penwortham, PRESTON, PR1 9YD

- Appeals A & B are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Wyldecrest Parks (Management) Ltd against an enforcement notice issued by South Ribble Borough Council.
- The notice, numbered 2022/0027/NOPLN, was issued on 1 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of land and unauthorised operational development to facilitate that change of use, together with further unauthorised operational development as follows:

Area 1

- i) Material change of use of the Land within the southern embankment area to residential caravan park together with unauthorised operational development to facilitate that change of use consisting of the excavation and removal of an embankment area and the construction of No3 concrete bases and associated concrete parking areas, in the area identified as Area 1 (shaded yellow) on the site plan attached to this notice.

Area 2

- ii) Unauthorised operational development consisting of engineering works to the southern embankment area consisting of the excavation and removal of the embankment identified as Area 2 (shaded blue) on the site plan attached to this notice.

Area 3

- iii) Unauthorised operational development consisting of engineering works to the southern embankment area consisting of the excavation and removal of the embankment identified as Area 3 (circle green) on the site plan attached to this notice

- The requirements of the notice are i) Cease the use of the southern embankment area outlined in red on the attached plan for use as a residential caravan park. Area 1 (ii) Remove the No 3 concrete bases and associated concrete parking areas that are situated in the yellow shaded areas on the site plan attached to this notice. iii) Remove the retaining embankment fence situated in the yellow shaded area on the site plan attached to this notice. iv) Restore the embankment area identified as Area 1 shaded yellow on the attached site plan back to the condition it was in before development commenced. Area 2 v) Restore the embankment area identified as Area 2 shaded blue on the attached site plan back to the condition it was in before development commenced. Area 3 vi) Remove the section of brick paved parking area that has encroached into the excavated embankment area. vii) Restore the embankment area identified as Area 3 circled green on the attached site plan back to the condition it was in before development commenced.
- The period for compliance with the requirements is 2 months for requirements i), ii), iii) and vi) is 2 months and 4 months for requirements iv), v) and vii).
- Appeal A & Appeal B is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended. Appeal A is also proceeding on

ground (a) and therefore an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the words "Material change of use of the Land within the southern embankment area to residential caravan park together with unauthorised operational development to facilitate that change of use" and the substitution of the words "Unauthorised operational development" in paragraph 3 i) regarding Area 1
2. Subject to the correction, the appeals are dismissed and the enforcement notice is upheld.

Application for costs

3. The Council has made a costs application against the appellant which is the subject of a separate decision.

The Site

4. Penwortham Residential Park has planning permission as a caravan site and is triangular in shape and bounded steeply on three side by former railway embankments which are covered in trees and vegetation. The notice alleges three breaches of planning control, all located within the southern embankment area which is the land as defined in the notice. The land was found to be a separate planning unit in appeal decision APP/F2360/X/20/3254047 ('the 2020 Appeal') in October 2020 (based on the evidence before the inspector at that time) and not part of the planning unit which had the caravan park use.

Ground (d)

5. An appeal under ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. This ground is only pleaded in relation to the alleged material change of use to residential caravan park (and does not relate to any of the operational development). The appellants argue that the development land forms part of the larger planning unit of the caravan park and has done so since the 1980s. They say that there has not therefore been a change of use to caravan park within the last 10 years and it is therefore outside the time period for the taking of planning enforcement action.
6. The Council states that the southern embankment forms a separate planning unit from the rest of the caravan site, notwithstanding that the access road cuts through it. I have been provided with official copies of title information but not the corresponding plans so that I am unsure as to the extent of the land covered by each title. The appellants state that this title information shows that the rest of the caravan site and the southern embankment have been in the same ownership since 1984 and this is not disputed by the Council. However, when permission for residential caravan use was initially granted it did not include any of the embankment areas. The appellants do not argue that the southern embankment has been used to station caravans at any point (other than to the limited extent in Area 3 as alleged in the notice) but rather that it has not been used for substantially and unrelated purposes to the wider area of

- the residential caravan site for more than 10 years prior to the issue of the notice.
7. The issue in the 2020 Appeal was whether the southern embankment had a lawful use as a residential caravan site. The inspector found that the evidence in that appeal failed to demonstrate that, on the balance of probabilities, there had been a material change of use of the southern embankment to amenity area incidental to the residential caravan site for a continuous 10 year period, and appears to have been primarily concerned, presumably based on the evidence put before him, with actual physical use of the embankments by the residents such as garden extensions.
 8. The case of *Burdle & Williams v SSE & New Forest DC* [1972] holds 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 separate and distinct and occupied for different and unrelated purposes. Where each area has a different primary use they ought to be considered as a separate planning unit. The southern embankment sits adjacent to the caravan site and provides a physical boundary which encloses it and which is covered in trees and vegetation, although due to its physical constraints (e.g. steep gradient and fairly dense woodland) it is unlikely that it has been used as public open space or amenity space in terms of people entering onto it. However, its use is as a naturally landscaped boundary which significantly contributes to the character and appearance of the site as well as providing screening and security.
 9. The additional statutory declarations provided by the appellant (which were not submitted in the 2020 Appeal) provide evidence that the southern embankment has been maintained by the caravan site owner for many years, albeit with a light touch given the wild nature of the woodland area. The statutory declaration from the employee, who has maintained the common areas in the Residential Park since 1992, expressly states that his duties include controlling the overgrown brambles along the southern embankment and removing fallen trees and overhanging branches from all three embankment areas. In addition, residents of the site who have lived there for over 10 years prior to the making of the 2021 LDC application confirm that it was viewed as part of the caravan site and contributed to the ambience and character, and give sworn evidence that the embankment areas have been maintained by the park owners during that time. I therefore find that the southern embankment is occupied for a purpose related to the caravan site, i.e. woodland landscape area associated with the site, and there is evidence on the balance of probabilities that this has been for a continuous period of more than 10 years prior to the service of the notice.
 10. As the appellants have proven that the material change of use to residential caravan park is immune from enforcement action, the appeal on ground (d) succeeds. The notice shall be corrected to remove the allegation regarding the material change of use but with the description of the operational development as 'stand-alone' development remaining. I am satisfied that this can be done without causing any injustice to the parties because the operational development is clearly described in the notice as having occurred around April 2019 which the appellant has not disputed. In addition, the appellant has also appealed on ground (a) regarding the planning merits of these works and so will not be prejudiced.

Ground (a) and the deemed planning application

11. The corrected notice alleges breaches in relation to three separate areas within the wider southern embankment. The application for deemed planning permission is therefore in relation to the following operational development:
- Area 1, the excavation and removal of an embankment area and the construction of No3 concrete bases and associated concrete parking area;
 - Area 2, engineering works consisting of the excavation and removal of the embankment; and
 - Area 3, engineering works consisting of the excavation and removal of the embankment.
12. The main issues are the effect of the development on the character and appearance of the area, protected woodland and trees and the Lancashire County Council Wildlife Corridors.

Reasons

13. As the southern embankment is covered by the South Ribble Borough Council Tree Preservation Order 1995, No.5, which is a woodland order, all trees within it are protected. It also lies within Lancashire County Council's Woodland Ecological Network and is part of a local wildlife corridor and supports a Priority Habitat, Lowland Broadleaved Woodland as identified by DEFRA.
14. There is evidence from the Council's Arboricultural Officer that work to TPO trees had been carried out without consent within Area 1 and that the siting of new homes in close proximity to the protected woodland would be unsuitable and likely to lead to future pruning. This is relevant to the operational development as the concrete pads are intended for the siting of caravans in that location, and it has also caused harm through the reduction of the area covered by the embankment and therefore reduction in the vegetation and wildlife corridor. The Council's evidence is that there has also been damage to tree roots caused by excavation on Area 2 and the severing of tree roots and pruning of trees in Area 3 to install a new mobile home.
15. The appellant has sought to argue that as the work has already taken place there will be no further harm caused, and that the policies relied on by the Council are prospective in nature and so do not apply to the harm already caused. Clearly this is not correct as most development plan policies are prospective in nature as they are written to guide future development. Consent was subsequently granted for works to trees within the appeal land but the Council is clear that some of this was only necessitated by the breaches as alleged in the notice.
16. The works are contrary to the policies as set out, and in any event, the operational development undertaken so far would facilitate the siting of additional caravans, which whilst not necessarily involving development in itself, would nevertheless be likely to lead to more harm to the trees and character and appearance of the appeal site for the reasons as set out. In addition, the excavation works in all three areas has reduced the extent of the woodland area within the southern embankment.

17. The damage to the TPO trees and woodland area is in conflict with Policies G13a) and G17 of the South Ribble Borough Council Local Plan adopted in 2015 ("the SRBCLP"), and paragraphs 130 and 131 of the National Planning Policy Framework ("the Framework") In addition, I find that the erosion of the woodland areas is harmful and contrary to Policy G16 which seeks to protect, conserve and enhance biodiversity and ecological network resources. The operational development causes harm to the character of the caravan site with a detrimental impact on the landscape features including mature trees. It does not respect the character of the site and the works to the southern embankment including the erosion of it and the operational development to allow additional caravans will harm the wider site increasing the built environment within and abutting the southern embankment. It also causes harm to the character and appearance of the wider area on the other side of the Southern Embankment and further conflicts with Policy G17 which is intended to secure good design which is not detrimental to existing development.

Other matters

18. It is evident from the submissions that there has been a lot of change on the wider residential park over the last few years, however these appeals are only dealing with the development to the southern embankment as set out in the notice. I cannot therefore give weight to considerations regarding the other changes to the wider site although I have taken account of the effect of the works on the southern embankment to the living conditions of other occupiers in the vicinity, both on and off the caravan site.
19. And whilst it seems likely the additional pitches created on the site could contribute to an increase in low-cost residential accommodation suitable for older people this in itself is not enough to outweigh the conflict with the development plan policies identified.

Conclusion on ground (a)

20. The development causes material harm to the character and appearance of the area and to the trees and woodland area contrary to the SRBCLP and Framework. As there are not material considerations to outweigh this harm the amended notice should be upheld and the deemed application for permission does not succeed.

Ground (g)

21. The appellants seek an extension of time in which to comply with the requirements to 9 months. However, they have not provided sufficient information as to why this additional time is required or how the original staggered periods of 2 and 4 months are insufficient to allow the works to be undertaken in a safe manner, and so the appeal on this ground fails.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/F2360/C/22/3302611	Wyldecrest Parks (Management) Ltd
Appeal B	APP/F2360/C/22/3302612	Best Holdings (UK) Ltd (Wyldecrest Parks (Management) Ltd)