
Appeal Decision

Site visit made on 20 September 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/E2001/C/23/3323452

Land adjacent to 6 St Peter's Lane, Laxton, Goole DN14 7UA

- 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 Mark Alder against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 4 April 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised erection of a building and the unauthorised material change of use of the land for the siting and residential use of a touring caravan and siting of a shipping container.*
- The requirements of the notice are:
 - (i) Cease the residential use of the Land;
 - (ii) Demolish the building and thereafter remove from the Land all resultant material arising from the demolition;
 - (iii) Remove from the Land all utility cables and pipes, and all drainage pipes, which have been installed to facilitate the use of the building;
 - (iv) Cease the use of the Land for the siting and residential use of caravans;
 - (v) Remove from the Land the touring caravan and shipping container;
 - (vi) Remove all domestic chattels, goods and paraphernalia from the Land.
- The period for compliance with the requirements is three months for steps (i) (iv) (v) and (vi) and six months for steps (ii) and (iii).
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the corrected enforcement notice is upheld.

Preliminary Matters

1. The notice essentially concerns two different allegations. The first is the erection of a building. The second concerns a material change in the use of the land.
2. The appeal site has been severed from the house to which it was formerly attached, at no. 6 St Peter's Lane, with a brick wall separating the two. Permissions have been granted for a building on the appeal site. The first, under reference 21/021931/PLF, was for a garage building in connection with the residence it was designed to serve at no. 6. The second, under reference 23/00990/PLF, has been granted since the notice was issued. The permission is for the "erection of detached building (retrospective) for proposed ground floor use as Village Shop/Coffee Shop and first floor use as Office Accommodation".

3. Whether or not those uses are commenced, it is evident from the Council's decision letter under reference 23/00990/PLF that a permission for the building now exists. The Council say that this permission opens a new planning chapter for the site, meaning that any former (lawful) land uses are no longer relevant.
4. Although the Council in their statement suggest that the building, presently unfinished, would need to be 'built and operated fully in accordance with permission 23/00990/PLF' in order to be regularised, the position with the notice is affected by section 180 of the 1990 Act. That section provides that where, after the service of a copy 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 it is inconsistent with that permission.
5. Here, the permission granted has authorised the construction of the building insofar as it has already taken place, although apparently in pursuit of a new use. Whilst there is no requirement to amend the notice to reflect these matters, it does mean that I shall leave the building out of account when determining the appeal against the notice, as the Council have found it to be acceptable.
6. The other part of the allegation, and related requirements, concerns an alleged material change of use of the land to residential purposes. Whilst this use was not ongoing at the time of my visit, there is no dispute that it had occurred. The notice includes the allegation of the 'siting' of a shipping container, but this does not in itself appear to describe a use of land (or any operational development). Although used somewhat differently at present, it appears that the container was, at the time the notice was issued, being used to store domestic effects commensurate with the residential use of the site. Having corresponded with the parties and having regard to their responses, I shall correct the allegation accordingly.
7. Although no appeal was made on ground (f), which is broadly to say that the notice's requirements are excessive, I expressed concern in correspondence to the parties that, by requiring the 'residential use' of the Land to cease, the notice potentially seeks to 'over-enforce'. This is because a residential use was apparently also the site's former lawful use, albeit as part of a wider planning unit consisting of the house and garden at no. 6. Section 57(4) of the 1990 Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.
8. However, the parties explained that the appeal site was severed from no. 6 some three years ago, both in occupation and ownership and by the creation of the dividing wall. Therefore any residential use of the appeal site, as garden land in connection with no. 6, was voluntarily lost at that point. This was some time before the notice was issued. The permission now granted for the building envisages a new planning chapter whereby the site may now (subject to discharging relevant planning conditions) lawfully be used as a shop and office. Therefore, having had regard to the parties' responses, it now appears to me unnecessary to make amendments to the notice so as to preserve any right of reversion. In any event, if the appropriate situation did arise, section 57(4) of the 1990 Act would apply irrespective of the terms of the notice.

Main Issues

9. The Council's reasons for issuing the notice are extensively expressed, but essentially come down to two issues. First, the effects of the development on flood risk; and secondly the effects of the development on the character and appearance of the site and the surrounding area.

Reasons

10. The appellant's documents submitted in the appeal do not seek to rebut or contradict the Council's case on either main issue.

Flood Risk

11. No mention is made by the appellant of flood risks. The Council explain that the site lies in Flood Zone 3 where residential development would not normally be permitted. On a previous application for residential development, the site was found to fail both the 'sequential' and 'exception' tests. I have no good reason to depart from the Council's analysis, which is that it has not been demonstrated that the site is safe from flooding, that no on-site flood mitigation measures are in place, and that therefore the site is unsuitable for residential development. Accordingly it contravenes policy ENV6 of the East Riding Local Plan 2012 – 2029 which seeks to avoid environmental hazards such as flooding resulting in unacceptable consequences.

Character and appearance

12. Again no assessment of these matters is made by the appellant. The residential use of the land was, at the time of the issuing of the notice, typified by the caravan and the shipping container. Policy ENV1 of the Local Plan requires development proposals to contribute to the character and appearance of the area and to achieve a high quality of design where appropriate. Although neither structure is a 'building', their presence on the site would be out of character with the surrounding residences on a village lane. Whilst caravans are not unusually found in domestic gardens (which the appeal site is not, although it lies in a residential area), I saw no other examples of any shipping containers in the vicinity. Its industrial appearance detracts from the semi-rural character of the area and thus is contrary to the requirements of policy ENV1.

Other matters

13. Although the appeal is only brought on ground (a) which is to seek planning permission for the alleged development, the appellant's statement seeks to explain his personal circumstances that have resulted in the alleged development coming to be present on the site. It is clear that the appellant now has somewhere else to live, and the caravan has been removed from the site.
14. Thus the only principal outstanding matter is the shipping container. Although no appeal has been brought on ground (g), which is to seek an extension of time to comply with the notice, I have nonetheless given consideration to this question in view of the appellant's explained circumstances.
15. At the time of my site visit I saw that the container was being used for the storage of a motorcycle and associated clothing and equipment, as well as some other items. The notice presently gives a period of three months in which

to remove the shipping container from the site. Three months is not an unreasonably short period within which to remove those items and arrange for an alternative place of storage.

16. It is said on the appellant's behalf that he is intending to complete the 'garage' building and use this to store his motorcycles and other items, and that the shipping container will be emptied and removed upon completion of the garage. However, the building does not benefit from permission to be used independently as a garage, or for storage. It has permission to be used as a shop and office. Accordingly there is no reason to await completion of the building before requiring the removal of the shipping container. Therefore I will not extend the period for compliance with the notice.

Conclusion

17. For the reasons given above I conclude that the development as alleged does not comply with the development plan for the area and that the appeal should not succeed. I shall uphold the enforcement notice with a correction to the allegation, and refuse to grant planning permission on the deemed application.

Formal Decision

18. It is directed that the enforcement notice is corrected, by deleting the text to paragraph 3 and replacing it with *Without planning permission, the unauthorised erection of a building and the unauthorised material change of use of the land to an independent residential use facilitated by the siting of a touring caravan and a shipping container.*
19. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR