



Appeal Decision

Site visit made on 25 September 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Appeal Ref: APP/G1630/C/22/3312912

Land at Lower Shetcombe Farm, Evesham Road, Toddington, Cheltenham, Gloucestershire GL54 5BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Julian Palmer against an enforcement notice issued by Tewkesbury Borough Council.
 - The notice was issued on 9 November 2022.
 - The breach of planning control as alleged in the notice the material change of use of the Land from a mixed use for agriculture and the storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder to a mixed use for agriculture and the storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder and residential use involving the siting and residential occupation of a static mobile home.
 - The requirements of the notice are:
 1. Permanently cease the use of the land for the siting and residential occupation of a mobile home.
 2. Permanently remove from the land:
 - a. The mobile home as identified in the approximate positions [sic] hatched blue on the attached plan.
 - b. The timber decking and railing that has been constructed around the mobile home.
 - c. Any and all associated residential paraphernalia, including but not limited to dog kennel, propane tank and patio furniture.
 - The period for compliance with the requirements is: Six (6) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - Substituting the plan attached to the notice with the amended plan annexed to this decision.
 - In section 3 the deletion of the alleged breach in its entirety and substituting instead the words "the material change of use of the land to a mixed use of agriculture, the storage of building materials, timber, builders plant and equipment, and scaffolding in connection with the business of a general builder within the area shown cross hatched black on the attached plan, and residential involving the siting and residential occupation of a mobile home".
 - In section 5 the deletion of the word "permanently" from requirements 1 and 2, and at requirement 2a the deletion of the word "positions" and substituting instead the word "position".

2. It is directed that the enforcement notice is varied by:
 - In section 6 the deletion of the words "Six (6)" and the substitution of the words "Nine (9)"
3. Subject to the above corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

4. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
5. As served, the breach of planning control specified in the notice is the material change of use of the land to *"a mixed use for agriculture and the storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder and residential use involving the siting and residential occupation of a static mobile home"*. The "land" is identified on the plan attached to the notice.
6. However, the *"storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder"* use is specifically confined to a small part of the land as set out in a Lawful Development Certificate¹ (LDC) from 2004. I observed during my site visit that the various components of that use had not migrated across the wider site and were still confined within the area of land identified in the LDC.
7. The target of the notice is clearly the siting and residential occupation of the mobile home. It is also evident that both parties are aware of the LDC and the part of the land to which it relates. Nevertheless, as the notice does not specify the area of the land to which the LDC relates, then by virtue of section 173(11) of the 1990 Act, following compliance with the notice that use would benefit from planning permission across the entire land identified on the plan attached to the notice. This is evidently not the Council's intention.
8. Therefore, in order to identify the part of the land to which the *"storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder"* relates, I have amended the alleged breach of planning control in section 3 and substituted the plan attached to the notice with the amended plan annexed to this decision. To make the allegation more succinct, I have also removed any reference to the lawful use(s) of the land as it is not a requirement for these to be specified by an enforcement notice.
9. The use of the word "permanently" in the requirements is unnecessary and consequently has been deleted. There is also a typographical error in requirement 2a which can be corrected for precision and clarity.
10. These corrections do not fundamentally change the notice or its requirements. Consequently, they would not cause injustice to either party.

¹ Council Reference: 04/11110/0112/CLE

Background

11. On the 11 June 2004 a LDC was granted in relation to part of the appeal site. This LDC certified that the use of the land for the '*Storage of building materials, timber, builders plant and equipment and scaffolding in connection with the business of a general builder. Use of buildings for storage of domestic furniture and stables*' was lawful.
12. Planning permission² was subsequently granted on the 7 July 2014 for the '*Demolition of existing B8 buildings and stabling. Erection of 1no. dwelling, associated access driveway and creation of a pond*' at the appeal site. A further planning permission³ was granted on the 17 July 2017 ("the 2017 permission") for the '*Erection of 1no dwelling, associated access driveway and creation of a pond (Redesign of dwelling previously approved under permission no. 14/00019/FUL)*'. There is no dispute between the parties that the planning permission was lawfully commenced and is therefore extant.
13. The appellant confirms that the mobile home subject of the enforcement notice was brought onto the site in 2019 and replaced a smaller caravan which had previously existed on the site. The appellant has also submitted evidence to demonstrate that the current mobile home falls within the legal definition of a "caravan". As a result, the Council accepts that the mobile home falls within the legal definition of a "caravan". From the evidence before me and from observations during my site visit, I concur with that view.

Ground (c)

14. To succeed on ground (c), the appellant must demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
15. The appellant advances two arguments in relation to the mobile home and why it is considered that its siting and residential occupation does not constitute a breach of planning control. Firstly, the appellant considers that the mobile home is permitted by virtue of condition 7 of the 2017 permission. Condition 7 states:

'Prior to the occupation of the dwelling hereby permitted all structures, associated with the former use of the site or used during the construction process, (including palisade fencing and mobile home), shall be permanently removed from the site.'
16. However, the significance of the above condition is that it only requires the removal of structures from the site, including a mobile home, in a specific set of circumstances which do not exist at present. No reliance can be placed on the condition in terms of demonstrating the lawfulness of the mobile home, nor does the condition have the effect of granting planning permission for the siting and residential occupation of the mobile home. As a result, the condition does not prevent the Council from taking enforcement action against the material change of use of the land alleged in paragraph 3 of the notice.
17. The appellant also maintains that the mobile home is "permitted" having regard to the terms of Class A, Part 4, of Schedule 2 of the Town and Country Planning

² Council Reference: 14/00019/FUL

³ Council Reference: 17/00183/FUL

(General Permitted Development) (England) Order 2015 (the GPDO). Class A of Part 4 permits *'The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or land adjoining that land'*. However, the occupation of a mobile home for residential purposes undoubtably amounts to the use of land as a caravan site which Class A of Part 4 does not permit. When considering whether the use of land as a caravan site constitutes permitted development, regard must instead be had to the terms of Class A, Part 5, of Schedule 2 of the GPDO.

18. Under that Class the use of land as a caravan site is permitted subject to the circumstances referred to in paragraph A.2. Those circumstances are those specified in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 (the CSCDA). That schedule sets out circumstances where a caravan site licence is not required. In most circumstances, if a caravan site licence would not be required, the development would also amount to "permitted development" under the GPDO.
19. Of most relevance in this case is Paragraph 9 of Schedule 1 which states that *"a site licence shall not be required for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out (being operations for the carrying out of which permission under Part II of the Act of 1947 has, if required, been granted) if that use is for the accommodation of a person or persons employed in connection with the said operations"*.
20. Several factors need to be complied with for those circumstances to be met. Building or engineering operations must be being carried out, permission must have been granted for those works, if required, and the person or persons living in the unit must be employed in connection with the operations. There is no dispute that the relevant permission has been granted for the works, by virtue of the 2017 permission. However, whilst it is apparent that works have commenced on site, there is no evidence of any recent building operations being carried out. Whilst photographs provided by the Council dated 27 June 2019 show the footings of the permitted dwelling in place, it is clear from the Council's photographs dated 25 May 2022 and from my site visit that no further building operations have taken place since.
21. Paragraph 9 of Schedule 1 refers to the use as a caravan site on land where building and engineering operations "are being carried out". That is not in the past or future tense but a requirement that works are actually being carried out at the time the land is being used as a caravan site. Put another way, the exemption from site licencing and the associated permitted development rights is on the basis that the residential use is by persons employed in connection with works that are ongoing. If no building or engineering operations are being carried out, then the use as a caravan site would not be permitted.
22. In this case, there is no evidence that any work has taken place in relation to the development permitted under the 2017 permission for at least the last four years. As a result, I conclude that the use of the land does not fall within the exemption listed at paragraph 9, Schedule 1 of the CSCDA and, consequently, that it is not permitted by Class A, Part 5 of Schedule 2 of the GPDO.
23. The appellant also argues that the timber dog kennel and the palisade fencing that surrounds it do not constitute a breach of planning control. This is on the

grounds that the dog kennel is not fixed to the ground and therefore does not constitute development, and that the palisade fencing is permitted under Class A, Part 2 of Schedule 2 of the GPDO as it does not exceed 2m in height.

24. Although the palisade fencing is not mentioned directly, requirement 2 (c) of the notice requires the removal of *"Any and all associated residential paraphernalia, including but not limited to dog kennel, propane tank and patio furniture"*. It is therefore clear that the notice seeks the removal of anything that has been introduced onto the land that is part and parcel and integral to the material change of use of the land.
25. It is a well-established legal principle⁴ that an enforcement notice directed at a material change of use may require the removal of works that are "part and parcel" of a change of use and are "integral to it". The dog kennel, which is enclosed by the palisade fencing, is located adjacent to the mobile home and is clearly part and parcel of the residential use of the land. Consequently, even if the dog kennel and palisade fencing amounted to permitted development or did not constitute development in their own right, as they form part of the material change of use of the land their removal can be required by the notice.
26. For the above reasons, I conclude that the matters alleged in the notice constitute a breach of planning control. The appeal under ground (c) therefore fails.

Ground (f)

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are to cease the siting and residential occupation of the mobile home and remove the mobile home, timber decking and railing, and all other associated residential paraphernalia from the land. The purpose of the notice must therefore be to remedy the breach of planning control.
28. The appellant has suggested lesser steps which consist of allowing a smaller mobile home to remain on site without any decking and railing, and enclosing the propane tank with a 2 metre high fence. These steps are suggested as the appellant considers that the provision of a mobile home on the site has previously been accepted by the Council. However, for the reasons detailed under the ground (c) appeal above, condition 7 of the 2017 permission does not have the effect of granting planning permission for the siting and residential occupation of the mobile home, nor does it demonstrate that its siting is lawful.
29. Whilst these lesser steps would clearly not remedy the breach of planning control, it could be argued that they would reduce the visual impact of the development. However, there is no appeal under ground (a) and consequently there is no deemed application for planning permission. As such there can be no arguments about the planning merits of the development under ground (f).

⁴ Kestrel Hydro v SSCLG [2016] EWCA Civ 784, Somak Travel Ltd v SSE [1998] 55 & P. & C.R. 250, Murfitt v SSE and East Cambridgeshire DC [1980] 40 P. & C.R. 254

The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose, which in this instance is to remedy the breach of planning control.

30. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

Ground (g)

31. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of six months after the notice takes effect.
32. The appellant argues that a compliance period of six months is unreasonably short, due to the mobile home being his sole place of residence and therefore alternative residential accommodation would need to be found. My attention has also been drawn to concerns regarding the appellant's health. The appellant has suggested a compliance period of two years, as it is considered that this would provide adequate time for the development permitted under the 2017 permission to be completed.
33. A compliance period of two years though would be tantamount to a temporary planning permission. Such a lengthy period is not reasonable and, in my view, exceeds the length of time that would be required to carry out the works and find alternative accommodation. Given the lack of progress over the past four years on the development approved under the 2017 permission, there can also be no guarantee that it would be completed in any case. Consequently, I am not prepared to extend the compliance period to that extent.
34. 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 interests of the appellant. The loss of the appellant's home would be an infringement of his rights under the Human Rights Act 1998 (HRA) and would amount to interference and would engage the right for respect for private and family life, home and correspondence as set out in Article 8 of the HRA. This is a qualified right, whereby interference must be justified if in the public interest, applying the principle of proportionality.
35. I recognise there is a need for expediency to ensure that the breach of planning control is remedied and expeditious compliance with the notice secured. Nevertheless, taking into account the fact that the requirements of the notice have a direct impact on the appellant's home, and given his personal circumstances, I recognise that a period of six months seems short. In weighing that balance, I consider that a period of compliance of nine months would be a more reasonable and proportionate time to both comply with the requirements of the notice and find alternative accommodation.
36. For the reasons given above, I consider it would be reasonable to extend the compliance period to nine months. The appeal under ground (g) therefore succeeds and the enforcement notice has been varied accordingly.

Conclusion

37. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have upheld the enforcement notice with corrections and a variation.

David Jones

INSPECTOR



Amended Plan

This is the plan referred to in my decision dated: 26 October 2023

by David Jones BSc (Hons) MPlan MRTPI

**Land at: Lower Shetcombe Farm, Evesham Road, Toddington, Cheltenham,
Gloucestershire, GL54 5BN**

Reference: APP/G1630/C/22/3312912

Scale: Not to scale

