



Appeal Decisions

Site visit made on 25 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2023

Appeal A Ref: APP/E2001/C/22/3313048

Land on the West Side of Kexby House, York Road, Kexby, East Riding of Yorkshire YO41 5LE

- 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 Act).
 - The appeal is made by Mr Richard Willis against an enforcement notice issued by East Riding of Yorkshire Council.
 - The notice was issued on 9 November 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the unauthorised material change of use of the land to mixed use for agriculture, the stationing of a static caravan for use as a site welfare unit, the formation of timber steps and platform and associated hardstanding to facilitate the use of the static caravan, and the stationing of shipping containers.
 - The requirements of the notice are to:
 1. Cease the use of the Land for the stationing of caravans, including cessation for use as a site welfare unit, with the exception of the 1 (one) timber lodge benefitting from planning permission 21/02942/VAR; AND
 2. Remove the static caravan from the Land being the caravan shown on the attached photograph marked 'Photo 'A''; AND
 3. Remove from the Land all supporting structures, including the concrete bricks/blocks, timber frame, bamboo screening, and timber steps and platform, which facilitate the use of the static caravan; AND
 4. Remove from the Land all hardstanding located within the area edged blue on the plan; AND
 5. Remove from the Land all utility cables and pipes connecting the static caravan to the utility hut, and all drainage pipes, which facilitate the use of the unauthorised static caravan; AND
 6. Remove the shipping containers from the Land; AND
 7. Upon completion of Step 1 through 5, 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 seeding.
 - The periods for compliance with the requirements are:
*Steps 1 to 6 inclusive within two months of the date this Notice takes effect;
Step 7 within six months of the date this Notice takes effect*
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Act. 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.
-

Appeal B Ref: APP/E2001/W/22/3309074

Ten Acres, York Road, Wilberfoss, East Riding of Yorkshire, YO41 5LE

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Willis against the decision of East Riding of Yorkshire Council.
 - The application Ref 22/01725/PLF, dated 22 May 2022, was refused by notice dated 30 August 2022.
 - The development proposed is described as "erection of Welfare Unit during construction period of holiday lodges".
-

Decision

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of the words 'caravans, including cessation' from step 1. of section 5. and their substitution with 'a caravan'
 - The deletion of step 7. of section 5. and the substitution of '7. Upon completion of Step 1 through to 5, restore the land to its previous condition that existed prior to the breach occurring.'
2. Subject to the corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

3. The appeal is dismissed.

The Enforcement Notice

4. Section 176(1) of the Act provides a wide-ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.
5. Step 1 of section 5 goes beyond remedying the breach as it seeks to prohibit use of any caravans on the land. However, while I have found the use not to be lawful, as set out later, there are circumstances where caravans can be brought onto land, if only for temporary use, for lawful purposes. I will therefore correct the notice accordingly so that it does not go beyond remedying the breach of planning control.
6. The requirement in step 7, section 5 of the notice is excessive and also unclear in terms of what might constitute 'best practice'. The appellant is best placed to know the condition of the land prior to the breach occurring and it is sufficient to require that it is restored to that former condition.
7. I am satisfied that no injustice to the appellant or the Council would arise by my correcting the notice in terms I have set out above. I have therefore done so using the powers available to me under Section 176(1) of the Act.
8. The appellant claims that parts of section 4 of the notice are incorrect. This includes reference to planning application 21/04619/PLF being refused when it was actually withdrawn, and the land not being in agricultural use. These matters have been addressed in the statement of cases submitted by the main parties. Section 4 remains clear in terms of the reasons for issuing the notice and therefore the notice is not flawed in this regard.

Appeal A - ground (b) and (c)

9. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
10. An appeal on ground (c) is that the matters alleged at section 3 of the notice, if they occurred, do not constitute a breach of planning control. The onus of proof

in ground (b) and (c) appeals is on the appellant and the test of the evidence is on the balance of probability.

11. At my site inspection, I saw a static caravan with timber steps and a platform leading to the caravan door, along with hardstanding. There were three shipping containers located in the east corner of the site.
12. The static caravan is intended as a site welfare unit in connection with the development of the timber holiday cabin¹. It is also confirmed that the three shipping containers are present on the site to be used as storage of equipment during the construction period of the timber holiday cabin.
13. The concept of a mixed use is one of two or more primary uses existing within the same planning unit. The red line boundary on the site plan attached with the notice denotes the extent of the planning unit and within this there are more than one primary use, these being agricultural and the use of land for the stationing of a static caravan for use as a welfare unit. There is no evidence before me to suggest that the static caravan, timber steps and platform, hardstanding and the shipping containers were not situated on the site at the date the notice was issued.
14. Consequently, the appellant has failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and appeal A on ground (b) must fail.
15. The appellant contends that the static caravan as a welfare unit and the steel containers are required for the development of the timber holiday cabin and therefore they are permitted development under Part 4, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). Class A of Part 4 states '*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 on land adjoining that land.*'
16. The appellant details that following the installation of services, hardstanding and the utility hut for the timber holiday cabin, works had stopped. Photos submitted by the Council indicate that the alleged unauthorised development has been on site since November 2021. The Council state that no development relating to the timber holiday cabin has been undertaken in 17 months following the alleged unauthorised development being on site. I saw no substantial evidence at my site visit that works on the construction of the timber holiday cabin was underway. Whilst the appellant states that works was temporarily halted to await the determination of the planning application for 6 additional lodges, this application has been withdrawn.
17. Three steel containers and a static caravan have been brought onto the site, which the appellant considers are required temporarily to undertake the construction of one timber holiday cabin and provide security. Plans submitted with the application for the retention of a temporary welfare unit shows a kitchen area, a toilet and three storage rooms. The static caravan is large with several rooms, and along with the three steel containers, is excessive and out of scale for what is required to construct a single timber holiday cabin of the size that has been approved.

¹ Planning permissions 17/01247/PLF & 21/02942/VAR

18. Taking account of all the above factors and with regard to all of the evidence before me, I consider that the static caravan is excessively large for the purpose of a welfare unit. As such, contrary to the appellant's interpretation of the GPDO, it cannot be properly regarded as being genuinely and reasonably required for the purposes of Class A of Part 4. Hence, I find it is not permitted development. The number of steel containers is also disproportionate, both in scale and in terms of what would be required temporarily in connection with the construction of a single timber holiday cabin. Operations for the timber cabin stopped at the site long before the enforcement notice was issued and there is no compelling evidence as to when they were or are likely to recommence. In these circumstances, even on the basis that one is allowed such structures for works yet to be carried out, a period of over 17 months cannot be reasonably considered to come within the definition of 'required temporarily'.
19. On the balance of probability, I conclude that the alleged unauthorised development is excessive for the operations being carried out and does not fall within the definition of 'required temporarily'. The matters alleged in the notice therefore do not benefit from being permitted development under Part 4, Class A of the GPDO. Furthermore, the change in the character of the use of the land is significant from its previous lawful use and thereby constitutes a material change of use that does not benefit from planning permission. It thereby constitutes a breach of planning control.
20. Appeal A on grounds (b) and (c) fail.

Appeal A – ground (a), and Appeal B

21. The ground of appeal for appeal A is that planning permission ought to be granted for the matters alleged in the notice. The proposal in appeal B is similar to matters alleged in the enforcement notice. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the appeals together, except where otherwise indicated.

Main issues

22. The main issues are the effect of the development on the character and appearance of the area and whether the development is at risk from flooding.

Reasons

Character and appearance

23. The area surrounding the appeal site is primarily rural countryside in character. The River Derwent borders the west and north of the site with the A1079 highway to the south and trees along the east. Open countryside is located beyond with only a scattering of built development situated along the highway. It is this open rural environment with a scattering of traditional buildings that contribute to the character of the surrounding area.
24. The static caravan, including the timber steps and platform, and the steel containers are utilitarian in design and form, and are out of keeping with the traditional style of buildings in the area. The site is not located within any designated landscape areas of importance, nevertheless, the structures given their design, scale and materials, are incongruous features that detract from the appearance of the surrounding area. Due to its size and positioning, the

hardstanding is also a discordant feature which has a detrimental effect on the appearance of the immediate area.

25. I note that under appeal B that only the static caravan as a welfare unit is proposed for a temporary period of 18 months. Whilst it would not be a permanent feature, given the design and form of the structure, it would nonetheless remain as a harmful feature that would adversely compromise the surrounding landscape for a considerable period of time. Planning permission has been granted for a single timber holiday cabin however, no planning permission exists for six holiday lodges. Consequently, there is no justification for a static caravan in relation to six holiday lodges and, as I have set out in Appeal A, the size of the static caravan is excessive to be required for the construction of a single timber holiday cabin.
26. Accordingly, the development does have a harmful effect on the character and appearance of the surrounding area. It does not accord with the requirements of Policies ENV1, ENV2 and S4 of the East Riding Local Plan 2016 (ERLP) or with the development plan as a whole, or with the National Planning Policy Framework (the Framework) which seeks development to contribute to safeguarding and respecting the diverse character and appearance of the area, sensitively integrate into existing landscape and respect the intrinsic character of the surroundings.

Flood risk

27. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The static caravan lies within a Flood Zone 3 area and whilst its intended use is to be a welfare unit for only a temporary period, given its location, it is appropriate that a sequential test is undertaken.
28. A Flood Risk Assessment has been submitted which provides a sequential test looking at four other sites that are discounted as being suitable alternatives. A static caravan that is proposed to be used as a welfare unit would normally be located as close to the development it supports as possible. From the submitted evidence, it does appear that there is an area within the east part of the site that lies outside Flood Zone 3, and this has not been included within the sequential test. The static caravan is raised above the ground level however, this height is still below the ground level of the area of land in the east corner of the site.
29. The sequential test does not adequately assess whether there are reasonably available sites appropriate for the static caravan in areas with a lower risk of flooding.
30. The static caravan is therefore at a higher risk of flooding which is harmful to the users of the caravan. The static caravan is contrary to Policy ENV6 of the ERLP and the Framework which seeks flood risk to be managed to ensure that development does not result in unacceptable consequences to its users.

Conclusion

31. The development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which indicates my decision should be made other than in accordance with the development plan.

32. For the reasons given above, I conclude that appeal A on ground (a) fails and appeal B should be dismissed.

Appeal A - ground (f)

33. An appeal on ground (f) is that the requirements of the (corrected) notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
34. The appellant re-iterates the arguments discussed under ground (b) and (c), that the structures do not constitute a material change of use as they are temporary buildings permitted under the GPDO. The appellant considers that the requirements are excessive as the structures on the site would be removed once the construction of the timber holiday cabin is complete.
35. Given that in respect of the breach of planning control the notice requirement is to completely remove all of the structures and cease the use of the land for the stationing of a caravan for use as a welfare unit, it is clear that the requirement clearly goes no further than remedying the breach. Anything less than cessation of the use and removal of the structures would not fully remedy the breach.
36. Accordingly, I conclude that the notice requirements are not excessive and appeal A on ground (f) fails.

Appeal A - ground (g)

37. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The time to comply with the requirements is 2 months for steps 1 to 6 and 6 months for step 7. The appellant originally sought 18 months to comply with the requirements, however, since the validation of applications 23/00602/PLF and 23/00148/PLF the appellant now states that 12 months is sufficient to comply with the requirements.
38. However, this ground (g) appeal relates solely to the question of whether the period of time needed to comply with the requirements, set out in Section 5 of the (corrected) notice, falls short of what should reasonably be allowed. Consequently, any period of time the appellant might desire for other future development is not relevant.
39. I see no reason why the necessary works required to remove the caravan and other structures from the land within 2 months, and restoration of the land within 6 months, could not be achieved. There is no compelling evidence before me to indicate otherwise. As such I conclude that the periods for compliance with the notice requirements do not fall short of what should reasonably be allowed.
40. Appeal A on ground (g) therefore fails.

Chris Baxter

INSPECTOR