



Appeal Decision

Site visit made on 24 October 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2023

Appeal Ref: APP/W3520/C/22/3305730

Land to the North of 2 Rectory Cottages, Rectory Road, Hemingstone, Suffolk IP6 9RD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Maxwell Woodard against an enforcement notice issued by Mid Suffolk District Council.
- The notice was issued on 19 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for the stationing of one static caravan, for residential purposes, in the approximate location edged in blue on the attached plan.
- The requirements of the notice are to remove the static caravan in its entirety from the land, and cap off any connections to services.
- The period for compliance with the requirements is within one month of the date this Notice comes into effect – i.e. by 20th September 2022.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the notice is corrected by the deletion of Section 4 and its substitution with:

4. WHAT YOU ARE REQUIRED TO DO

Cease the use of the land for the stationing of a caravan for residential purposes, remove the static caravan in its entirety from the land and cap off any connections to services, limited to those services which are connected to the caravan only.

2. It is further directed that the notice is varied by the deletion of the phrase 'i.e. by 20th September 2022' in Section 5.
3. Subject to the correction and variation the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

4. The appeals on grounds (e), (b), (c) and (d) are legal grounds of appeal and in each case the onus of proof lies with the appellant. The evidence provided by the appellant must be sufficiently precise and unambiguous, regardless of whether or not there is evidence to contradict the appellant's version of events. The standard of proof is the balance of probabilities.
5. Human Rights and the Public Sector Equality Duty set out under s149 of the Equality Act 2010 do not come into play in legal grounds. This is because for those grounds the questions are, as a matter of fact and law, whether the notice was properly served and whether the matters set out in the notice have

occurred, or do not constitute a breach of planning control or are immune from enforcement action. The legal grounds do not allow for consideration of the effect of the decision on individuals and their rights and nor does ground (f).

6. There is no appeal on ground (a) which is that planning permission should be granted. Therefore, the merits of the development are not matters which are before me, including the argument made by the appellant that the caravan is not detrimental or harmful to the surrounding area.

The Notice

7. I have a duty to get the notice in order if I can properly do so. This includes powers under section 176 of the 1990 Act (the Act) which allow me to vary and/or correct an enforcement notice provided that in doing so no injustice is caused to either party.
8. The requirements should square up with and follow logically from the allegation, with regard to what a notice may require under s173(3)-(7) of the Act. It is within my power to bring the steps into line with the allegation.
9. In this case the alleged breach of planning control relates to a change of use of land. However, the requirements of the notice seek the removal of a static caravan and for connections to be capped only, they do not require the use to cease.
10. I invited the Council to comment on this aspect of the notice and whether, if necessary, it is capable of correction without giving rise to injustice to the parties. The Council is of the view that 'the removal of the caravan would in effect cease the use of the land for its stationing'. However, it accepts that the correction could be made, and, in its view, this would not result in injustice to either party.
11. The appellant has confirmed that he does not wish to make any comments about this correction to the notice.
12. Notwithstanding the comments made by the Council, I am of the view that the notice requires correction. This can be done without giving rise to injustice to either party and I shall make the correction and determine the appeal accordingly.

Ground (e)

13. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required.
14. The appellant says that the plan attached to the notice does not identify all of the land which he controls, and which benefits from a Certificate of Lawful Use or Development (LDC). He also says that he has a permanent address in Essex.
15. The notice was sent to the appellant at an address in Essex. There is no evidence to suggest the appellant did not receive the notice and the fact that he has submitted an appeal demonstrates that he is aware of it. The comments which the appellant makes about the extent of the land identified in the notice are not relevant to an appeal on ground (e).
16. For the reasons set out above the appeal on ground (e) does not succeed.

Ground (b) and Ground (c)

17. An appeal on ground (b) is that the matters to which the notice relates have not occurred and an appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control.
18. In his appeal submission, the appellant says that the caravan has not been used for residential purposes and that he has no intention of using the caravan as a residence. He refers to the caravan being used for shelter in association with the lawful use of the appeal site and wider land in his ownership. However, in his final comments the appellant refers to staying occasionally overnight in the caravan approximately twice a month and for no more than 28 days a year. This amounts to a residential use of the caravan.
19. On that basis the breach has occurred and the appeal on ground (b) does not succeed.
20. In an email sent to the appellant in July 2020 a Council Officer advised him that he should only use the caravan to stay in for 28 days per year. The email refers to a visit carried out by the officer and photographs, but these have not been provided to me. There is no reference in the email to the reasons why the Council considered that the use of the caravan in this way would be lawful in planning terms.
21. The Council served the appellant with a Planning Contravention Notice (PCN) in April 2022. Following the return of the PCN the Council wrote to the appellant in June 2022. In that letter the Council refers to the smaller caravan which was on the site being replaced by a larger caravan. The view is expressed that while the smaller caravan could be considered as providing shelter, the larger caravan could not. The Council required that the caravan be removed within 28 days.
22. There followed a further exchange of correspondence and in a second letter from the Council it confirmed its view that the caravan should be removed within 28 days.
23. The appellant states that the Council has confirmed by two letters and an email that the caravan can be used to stay on the land for up to 28 days in a year. However, the only reference to 28 days in the letters which have been provided to me relates to the time period within which the appellant was advised to remove the caravan.
24. The email dated July 2020 appears to relate to a different caravan which has subsequently been replaced. The appellant says that there is no legal difference between a small, large, static, or touring caravan. This is broadly correct as if the use of land for the stationing of a caravan is lawful then the replacement of one caravan with another is not an act of development. However, that is dependent on the use of the land for that purpose being lawful in the first instance.
25. In December 2002 the Council issued an LDC for use of land for storage of between one and five cars, two trailers, one cultivator and up to three tractors with only occasional visits to the site by any person. In May 2003, following a successful appeal, the First Schedule of the LDC was modified to include reference to use Class B8 of the Town and Country Planning (Use Classes) Order 1987.

26. The LDC does not refer to the stationing of caravans on the land for any purpose. The appellant argues that reference to trailers could refer to caravans, but I disagree. The term caravan is defined in s29(1) of the Caravan Sites and Control of Development Act 1960 (the CSCDA 1960) as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another'. The term 'trailer' does not equate to a caravan and given the need for precision in the terms of an LDC it is reasonable to assume that had there been caravans on the land they would have been specifically described as such.
27. The use of the site as described in the notice does not fall within the description of the use as set out in the LDC and on that basis it is not lawful by virtue of the LDC which has been issued.
28. The email from the Council in July 2020 does not refer to any rights which the appellant had under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). However the reference to 28 days coincides with the terms of Schedule 2 Part 4 Class B of the GDPO which defines the use of land for any purpose for not more than 28 days in total in any calendar year as permitted development. However, this is subject to conditions one of which is that the use of land is not for the siting of any caravan.
29. Part 5 Class A of the GDPO relates to use of land as a caravan site. However, in that case the use is subject to a condition that the use of a caravan site falls within paragraphs 2 to 10 of Schedule 1 of the CSCDA 1960. The use of the site as described by the appellant does not fall into any of these categories either.
30. The evidence before me does not point to any other circumstances where a caravan stationed on land and used on an occasional basis for residential purposes would amount to permitted development.
31. The appellant has not demonstrated that the matters which are alleged in the notice are lawful under the terms of the LDC nor that they amount to permitted development. He also makes no arguments that the use does not amount to development nor that it benefits from planning permission.
32. For the reasons set out above the appellant has not shown that the matters alleged in the notice do not constitute a breach of planning control and on that basis the appeal on ground (c) does not succeed.

Ground (d)

33. An appeal on 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 those matters.
34. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action. In the case of a material change of use to land for the stationing of a caravan the immunity period is 10 years. In order to achieve success on ground (d) the appellant must show that the change of use which is described in the notice had occurred by 19 July 2012, being the date ten years prior to the notice being issued, and that the use has continued for a period of ten years without significant interruption.

35. The appellant refers to an aerial photograph dated 2004 which he says shows caravans on the site. Even if the white shapes on the photograph are caravans, there is no evidence that they are being used for residential purposes. It is reasonable to assume that they could alternatively have been being stored on the site given the storage use which was taking place at the time. The same features are present on the aerial photograph dated 2007 but again there is no certainty that they are caravans or in residential use.
36. The aerial photographs dated 2014, 2016, 2017 and 2020 do not show with any clarity that there are caravans or any other features on the land which is the subject of the notice. This is mainly because of tree and shrub cover which obscures views. Other photographs of the site which have been provided by the appellant are undated and it is not clear which parts of the site they depict.
37. The appellant says that he bought the property in 2016 and that at that time there were three caravans there. However, he does not say that the caravans were on the land, which is now the subject of the notice, nor does he confirm that the caravans were in use for residential purposes.
38. A signed letter by the person who assisted him in clearing the site after he purchased it has been submitted by the appellant. This letter does not have the status of a Statutory Declaration, but it does provide evidence of caravans being present on the site. Nevertheless like the appellant's own evidence it does not specify where on the land the caravans were located. Similarly although the person refers to the caravans having kitchens and bathrooms there is no evidence to clarify whether they were being used for residential purposes on the appeal site or simply being stored there as part of the ongoing storage use.
39. There is drainage on the site and the appellant states that this has been present for more than 14 years. The Council has not disputed this, and it does not require the removal of any services as part of compliance with the notice. Nevertheless, the presence of services does not of itself demonstrate that any caravans have been used for residential purposes particularly as the appellant confirms that the services also serve the portacabin and office.
40. Drawing all of these points together, the evidence provided by the appellant lacks both certainty and precision. Even though it is likely that there have been caravans on the land owned by the appellant it is not clear whether they have been on the land which is the subject of the notice. Furthermore, the photographic evidence lacks clarity, and evidence of continuous residential use for a period of ten years prior to the notice being issued has not been demonstrated.
41. The appellant has not shown, on the balance of probability, that at the date when the notice was issued the breach of planning control had gained immunity from enforcement action. Therefore, the appeal on ground (d) does not succeed.

Ground (f)

42. In this case the appeal on ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control.

43. The appellant argues that the Council has confirmed that he may station and use a caravan on site, and it would be excessive for him to have to disconnect and reconnect services whenever he visits the site. However, those are not the requirements of the notice which, notwithstanding any earlier advice from the Council, and as corrected, now requires the cessation of use for the stationing of a caravan.
44. In his final comments the appellant states that he considers the requirement to cap off services is 'perverse' because they are associated with the permitted business uses. The Council query why services such as mains electricity is necessary to serve the storage use, however the notice does not go so far as to require the removal of those services.
45. A variation of the requirements to clarify that it is those services which relate to the use of the caravan which are to be capped off would address the point raised by the appellant and provide clarity. In that respect the appeal on ground (f) succeeds.

Ground (g)

46. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.
47. The appellant points out that the time for compliance which is stated to be by 20 September 2022 is 'overruled' by the appeal. The notice refers to a date in addition to the compliance period of one month. In the light of the appeal it is necessary to remove the date reference which is now superfluous. This would not give rise to injustice to either party and I shall vary the notice accordingly.
48. The appellant argues that the compliance period of one month is unreasonable and inappropriate. This is on the basis that he considers that there has been no breach of planning control and it was not expedient for the Council to issue a notice. However, it will be seen from my reasoning on ground (c) that I have found that the matters set out in the notice constitute a breach of planning control.
49. The Equality Act 2010 (the EA Act) prohibits discrimination against persons with the protected characteristics specified in s.4 of the EA Act. Protected characteristics include disability. The appellant is a person with this protected characteristic.
50. There is no information before me to suggest that compliance with the notice within the compliance period would have any greater impact on the appellant as a person with a disability than for someone without this protected characteristic.
51. In the absence of any evidence to the contrary, I find that the one month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should not succeed.

Sarah Dyer

INSPECTOR