



Appeal Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2023

Appeal Ref: APP/W1850/C/23/3323354

2 Hazeldene, Kingsland, Leominster HR6 9RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Will Keysell against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 26 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, the use of land for the siting of two mobile homes for residential purposes.
- The requirements of the notice are to:
 1. Cease the use of the mobile homes for residential purposes.
 2. Remove the mobile homes from the land.
- The periods for compliance with the requirements are:
 1. 180 days from the date this notice takes effect.
 2. 240 days from the date this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The Notice

1. The enforcement notice (the notice) alleges the use of land for the siting of two mobile homes for residential purposes.
2. Paragraph 1 of the notice states there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.
3. Whilst the notice refers to 'the use of land' it does not allege that a material change in the use of the land has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
4. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
5. However, having regard to the appellant's case and their appeal under ground (c), they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice

to include reference to a material change of use would not cause injustice in this case.

6. The allegation also states the mobile homes are for 'residential purposes'. On the face of it, it is unclear whether this alleges the mobile homes are used ancillary to the main dwelling or are being used as a separate residential unit. During the hearing, the Council confirmed that they allege they are used as a separate residential unit and the appellant's ground (c) is based on the assumption that this is what the Council meant. Consequently, I am satisfied I can vary the allegation in order to make it more precise without causing injustice to any party.
7. No appeal has been made under ground (g). However, the Council will be aware of the appellant's very challenging circumstances, and of its power to extend the period for compliance with the notice under s173A(1)(b) of the 1990 Act. However, that is a matter entirely for the Council, and it will no doubt take into account all relevant considerations.

The ground (c) appeal

8. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
9. There is no dispute between the parties that the mobile homes fall within the definition of a caravan under the Caravan Sites and Control of Development Act 1960. Based on the evidence before me and the observations I made on site, I find no reason to conclude otherwise. The crux of the matter is whether the mobile homes are used ancillary to the main dwelling, 2 Hazeldene.
10. The appellant argues they live in the mobile homes whilst they renovate the dwelling. They inherited the dwelling in 2014 and moved the mobile homes on to the site in April 2019 with the intention to live in them until such time as the dwelling was in a habitable state.
11. At the time of my site visit, the house was clearly not in a habitable state and there was an extensive amount of personal possessions stored in the kitchen and living area downstairs. For safety reasons, I was unable to view the first floor of the property. The appellant confirms the electricity and water supply to the dwelling has been isolated for safety reasons.
12. Consequently, none of the facilities within the dwelling, such as the bathroom or kitchen, are functional. One of the mobile homes is lived in by the appellant and provides all the facilities for day-to-day living such as a bedroom, kitchen, bathroom and living area. Whilst the appellant may spend time in the dwelling to reflect, they are not reliant on it for any day-to-day facilities. Consequently, I find that this mobile home is not used as ancillary accommodation to the main dwelling but is a separate residential unit.
13. The second mobile home is used for storage. The appellant states it is used for the storage of personal possessions once they have been sorted and removed from the dwelling. At the time of my site visit, there were a large number of boxes and bin bags full of personal possessions from the dwelling and the appellant's large collection of magazines. There is no evidence the appellant uses this mobile home for day-to-day facilities as part of their occupation of the other mobile home. Therefore, I find that this mobile home

is used as ancillary storage space to the main dwelling and does not form part of the separate residential unit comprising the other mobile home.

14. Since living on the site, the appellant has removed ivy from the dwelling, painted the external walls of the dwelling and laid stone on the driveway. There does not appear to have been any renovation works to the interior of the property. The appellant states they have spent much of their spare time sorting through their family's possessions in the dwelling.
15. I understand the significant emotional attachment the appellant has to the dwelling. Sorting through the family possessions no doubt evokes personal memories. Nevertheless, after a period of over four years of living on site, very little progress has been made on renovating the modest sized property. Whilst the appellant has also been financially constrained, restricting what renovation works they can do, tasks such as sorting through and clearing the personal possessions does not cost money.
16. In order for the mobile homes to be sited on the site on the basis that the appellant is living in them whilst the renovation of the dwelling is undertaken, there must be reasonable progress in the renovation of the dwelling. Regardless of the appellant's genuine intentions, I do not accept reasonable progress, if any, has been made on the renovation of the dwelling. The little work that has been done, ie removing ivy and painting, could be argued as being simply general maintenance work, rather than renovation works.
17. Consequently, the ground (c) appeal succeeds to the extent it has been demonstrated that the mobile home used for ancillary storage to the main dwelling has not resulted in a material change of use of the land and therefore is not a breach of planning control. However, the ground (c) appeal fails in respect of the mobile home that is used as a separate residential unit. Accordingly, I shall correct the allegation and the requirements of the notice to delete reference to the mobile home used as ancillary storage.

Formal Decision

18. It is directed that the enforcement notice is corrected by:
 - (a) The deletion of the alleged breach of planning control under paragraph 3 and substituting "Without planning permission, the material change of use of the land for the siting of a mobile home (edged in green on the plan attached to this notice) for use as a separate residential unit".
 - (b) The deletion of requirement 1 under paragraph 5 and substituting "Cease the use of the mobile home as a separate residential unit".
 - (c) The deletion of the word "homes" under requirement 2 of paragraph 5 and substituting "home".
 - (d) The deletion of the plan scale 1:821.5 attached to the notice and substituting the plan attached to Annex 1 of this decision.
19. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

A Walker INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Will Keysell

The appellant

Matt Tompkins

Tompkins Thomas Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mark Tansley

Herefordshire Council

ANNEX 1

