



Appeal Decision

Site visit made on 21 November 2023

by S A Hanson

an Inspector appointed by the Secretary of State

Decision date 15 December 2023

Appeal Ref: APP/W1850/C/23/3325056

The Prospect, Bosbury, Ledbury, Herefordshire HR8 1QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Fiona Yates (Prospect Poultry) against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 30 May 2023.
- The breach of planning control as alleged in the notice is: Without planning permission the use of the land for the siting of one mobile home for residential purposes.
- The requirements of the notice are to: 1. Cease the use of the mobile home for residential purposes. 2. Remove the mobile home from the land.
- The periods for compliance with the requirements are: 1. 30 days from the date this notice takes effect. 2. 180 days from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) of the Town and Country Planning Act 1990 as amended (the Act).
- Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (b)

2. An appeal on ground (b) is that the matters stated in the notice have not occurred.
3. The breach of planning control as alleged in the notice is the 'change of use of the land for the siting of one mobile home for residential purposes'. From the Council's submissions it appears that it considered that a stockman's caravan previously sited on the land and granted a certificate of lawfulness in December 2015¹ for a purpose incidental to the agricultural use of the land, was being used for residential purposes and being rented out for overnight stays. In the reasons for issuing the notice, the breach was considered to have occurred within the last 10 years and thus not immune from enforcement action by virtue of s171B(3) of the Act.
4. The term 'caravan' is defined in s29(1) of the Caravan Sites and Control of Development Act 1960 as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—(a) any railway rolling stock which is for the time being on rails forming part of a

¹ LPA Planning ref P153302/V

- railway system, or (b) any tent'. Thus, the word caravan should be construed in accordance with the statutory definition meaning that a caravan is mobile.
5. The appellant's submissions refer to a touring caravan originally being sited on the land for the supervision of poultry. This was subsequently replaced with a larger caravan that was subsequently stolen in 2014. That caravan was not replaced despite a certificate for lawful use or development being issued to establish a proposed use for a purpose incidental to the agricultural use of the land in 2015, as previously referred to. As a substitute for the caravan, the appellant states that they utilised an existing livestock building on the land which they say was later converted to provide residential accommodation.
 6. During my site visit I observed that the subject of the notice was a timber structure clad with horizontal boarding, roofed with corrugated sheeting and set atop a concrete slab. It had a pitched roof that overhung the frontage, in a similar manner to an equine stable, and guttering attached. On the front elevation a set of uPVC French doors and a single wooden stable door provided access to the modest living area which consisted of a kitchen and living/sleeping area. Adjoining this, and forming part of the unit, was a space housing a toilet and basin. This was accessed from the front via a wooden door. To the rear of this, and accessed from the side via a wooden door, was a shower room. There were no windows or doors on the rear or the other side of the structure.
 7. The Council's evidence deals with the siting of a caravan for human habitation. Having regard to the evidence and from what I observed on site, I consider that the allegation is incorrect as the subject of the notice does not meet the definition of a caravan.
 8. The tests arising from *Cardiff Rating Authority v Guest Keen Baldwin Iron & Steel Co Ltd* [1949] 1 KB 385 endorsed by *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* [2000] JPL 1025 indicate that the key considerations as to whether, as a matter of fact and degree, a building exists are: (a) size - a building would normally be something which was constructed on site as opposed to being brought already made to the site; (b) permanence - has the structure been moved? Is it capable of being moved and, if so, how? Is it intended to be moved in practice? How long has it been, or will it be in one position? It should be noted that 'permanence' does not necessarily mean 'forever or indefinitely'; and (c) physical attachment - how it is it fixed to the ground? Does it need to be fixed, or will it rest by its own weight? Is it mounted on a permanent base? Is it attached to services? Has the placing of the building resulted in any physical change in the characteristics of the land?
 9. The structure is of solid timber construction, and I am advised that it was constructed on-site when it was brought onto the land for the purposes of providing shelter for livestock. While it may have been previously moved within the site, it is unlikely to be moved now due to it being attached to electricity, water and drainage. It is also set atop a concrete base which appears to have been put in place for the structure and it has been extended to the side with similarly designed buildings to house poultry. Overall, the size and design of the building suggests that it cannot easily be moved within the site and thus it displays a sufficient degree of permanence. As a matter of fact and degree, I consider the structure to be a building rather than a caravan.

10. There are wide powers available to me under s176 of the Act to correct any defect, error or misdescription in the enforcement notice or vary its term so long as it will not cause injustice to either party.
11. In these circumstances, due to time limits for taking enforcement action which are presently defined in s171B of the Act, injustice would likely be caused to the appellant if I was to correct the notice. This is because the change of use of any building to use as a single dwellinghouse is currently subject to a four year time limit for enforcement action under s171B(2) of the Act, but the ten year rule under s171B(3) applies to a material change of use of land, as stated by the Council in the notice.

Conclusion

12. For the reasons given above, the appeal on ground (b) therefore succeeds and the notice shall be quashed. As the appeal has succeeded on ground (b) it follows that the appeal on grounds (c), (d) and (f) does not fall to be considered.
13. Should the Council wish to continue to pursue enforcement action, it may consider doing so by means of a replacement notice framed in the proper terms, having regard to the 'second bite' provisions of section 171B(4)(b) of the Act.

S A Hanson

INSPECTOR