



Appeal Decision

Site visit made on 4 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/L3815/C/22/3300531

Land north west of Newbridge Farm, Salthill Road, Fishbourne, West Sussex

- 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 appeal is made by Mr Adrian Thomas against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 26 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the Land to a mixed use comprising the stationing of a mobile home for the purposes of human habitation and the operation of a waste collection business.
 - The requirements of the notice are: (i) Discontinue the use of the Land for the stationing of a mobile home for the purposes of human habitation; (ii) Remove the mobile home and portable toilet from the Land; (iii) Dismantle the lean-to porch, wooden deck and free-standing kitchen (adjacent to the mobile home) and remove resultant debris from the Land; (iv) Remove the two metal container buildings and portable cabins (used to store household items) from the Land; (v) Remove the parked motor vehicles and lorry from the Land; (vi) Discontinue the use of the Land as a waste collection business; (vii) Remove from the Land all non-agricultural goods and items including but not limited to metal goods and all wooden pallets, sawn wood, plant pots, car seats, tyres, shower tray, oil drums, log splitter, filing cabinets, oil drum barbeques, boat and trailer, chimney pots, trailers, touring caravan, cables, trailer plates, household items, armchairs, sofa, table, washing machines, generator, awning roller blinds, hippo waste bags, uPVC doors, wooden glazed doors, fridge, pool table, building material and cement mixer; (viii) Break up and remove from the Land the earth bund and fencing; and, (ix) Following step (viii), level the Land to follow the natural gradient/slope of the Land.
 - The period for compliance with the requirements is eight months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended. 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 as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld subject to corrections.

The ground (b) appeal

2. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breaches of planning control have not occurred as a matter of fact. In the various

submissions the appellant contends that a waste collection business is not operating from the site and that the stationing of a mobile home for the purposes of human habitation has also not occurred as a matter of fact. I will therefore consider these contentions here.

3. The evidence of the appellant is that a site management unit was installed on 22 November 2017 for the purposes of forestry. The Council contends this was a mobile home, and I have very little evidence, including from my site visit, to demonstrate on the balance of probabilities that it was anything other than a single unit caravan for the purpose of the Acts¹.
4. The appellant contends that he then undertook building works to the mobile home and subsequently occupied it as a dwellinghouse. These works were said to be completed and the residential occupation commenced prior to 18 April 2018.
5. There is however very limited evidence before me concerning those building works other than the assertion that the mobile home was extended to increase its dimension to 7m in width. However, photographs of the extension date stamped 16 April 2021, show a very light weight open sided structure. During my site visit, the width of this was measured as 6.05m. It has however since been further extended, with a width of 7.4m. This therefore undermines the appellants version of events. In any event, I am not persuaded that the lean-to, even in the guise that I observed during my site visit and along with some decking, or from the other limited evidence before me, demonstrates on the balance of probabilities that the mobile home is now a building.
6. This is because these accoutrements, even taking account of the enlarged lean-to, remain light weight attachments which could easily be removed or demolished, thereby allowing the mobile home to be removed by the same means that it was brought to the site. As a matter of fact and degree, the evidence of these works therefore do not result in a structure of sufficient size, permanence or physical attachment² to the ground to render the mobile home a building. They are accordingly ancillary operational developments as opposed integral and part of a process of successfully converting a caravan to a building.
7. In terms of the alleged operation of a waste collection business, there is then no building or curtilage for the items/materials at the site to be incidental to. Given the significant quantum and their diverse and ad hoc nature, it has also not been demonstrated on the balance of probabilities that the items/materials are incidental to the residential or any supposed forestry use of the site. The presence of the items/materials therefore amounts to development for the purposes of s55 of the Act.
8. However, the appellant vehemently denies that he is operating a waste collection business. I also find it problematic to describe the use of land as the operation of a business, as it does not necessarily connote the character of the use or indeed the actual use that is subsisting.
9. There is accordingly very little verified evidence, even from the Council, concerning the operation of a waste collection business, as has been alleged. Instead, it remains applicable to consider the character and use of the land that

¹ Caravan Sites and Control of Development Act 1960; Caravan Sites Act 1968

² As per: *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

is actually subsisting, for example, during the snapshot of my site visit, that of open storage.

10. It would therefore be appropriate to correct the notice by omitting references to the operation of a waste collection business. Injustice would not arise from making such corrections to the notice. It would then be open to the Council to reconsider and investigate the matter afresh in respect of the items/materials that are not enforced against as a result of the remaining requirements of the enforcement notice, albeit that is a matter which is entirely for them.
11. As a matter of fact and degree, based upon the evidence before me, the appellant has failed to demonstrate on the balance of probabilities that the stationing of a mobile home for the purposes of human habitation has not occurred as a matter of fact. However, the appellant has discharged the necessary burden of proof to demonstrate that there has not been a material change of use to include that of the operation of a waste collection business.
12. The appeal on ground (b) therefore succeeds to this extent.

The ground (d) appeal

13. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
14. The appellant has failed to demonstrate on the balance of probabilities that the stationing of a mobile home for the purposes of human habitation has not occurred as a matter of fact. It is therefore not a building for residential or forestry use.
15. The evidence of the appellant is that the mobile home was first brought to the site on 22 November 2017.
16. Accordingly, the appellant is unable to demonstrate on the balance of probabilities a 10-year continuous period of use pursuant to S171B(3) of the Act and thus it was too late to take enforcement action.
17. The appeal on ground (d) therefore fails.

Conclusion

18. For the reasons given above I conclude that overall the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

19. It is directed that the enforcement notice be corrected by:
 - deleting the words '*mixed*' and '*and the operation of a waste collection business*' from section 3 of the notice;
 - delete requirements 5 (vi) and 5 (vii); and,
 - renumerate requirements 5 (viii) and 5 (ix) including references within accordingly.

20. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR