



Appeal Decisions

Site visit made on 16 January 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 1 February 2024

Appeal A Ref: APP/P1615/C/22/3303152

Land Adjoining Bullo Pill Dock, Bullo Pill, Newnham, Gloucestershire, GL14 1ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Darren Larkham against an enforcement notice issued by Forest of Dean District Council.
 - The notice, reference EN/0096/20, was issued on 15 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land, to a mixed use of residential (static caravans) with associated residential paraphernalia, and the raising of ground levels.
 - The requirements of the notice are 1) Cease the residential use of the land and the stationing of caravans within the Yellow Shaded Area on the site location plan. 2) Disconnect all services and facilities (electric, gas, water and drainage) connected to the caravans within the Yellow Shaded Area of the site location plan, as shown in the photographs within Appendix 2. 3) Remove from the land all static caravans and their constituent parts and associated residential paraphernalia from within the Yellow Shaded Area on the location plan, as shown in the photographs within Appendix 2. 4) Remove from the land all resultant materials generated through the compliance with steps 1-3 above within the Yellow Shaded Area. 5) Permanently cease the importation of waste materials onto the land within the area outlined in red on the site location plan.
 - The periods for compliance with the requirements are: 3 months for steps 1-4 and immediately for step 5.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. 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.
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Appeal B Ref: APP/P1615/C/22/3303146

Land Adjoining Bullo Pill Dock, Bullo Pill, Newnham, Gloucestershire, GL14 1ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Darren Larkham against an enforcement notice issued by Forest of Dean District Council.
- The notice, reference 0096/20, was issued on 15 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a mixed use of residential caravans, camper vans with associated residential paraphernalia) and workshop (shipping container workshop structure) and associated materials.
- The requirements of the notice are 1) Permanently cease the residential use of the Land and its use as a metal fabrication business within the Blue Shaded Area on the site location plan; 2) Disconnect all services and facilities (electric, gas, water and drainage) from the caravans, camper vans, mobile homes, the 'shipping container' workshop structure and the toilet within the Blue Shaded Area on the attached location plan, as shown in the photographs in Appendix 2. 3) Remove from the land all caravans/mobile homes/campervans, and all their constituent parts, within the Blue

Shaded Area on the site location plan, as shown in the photographs in Appendix 2. 4) Remove from the land the 'shipping container' workshop structure and all its constituent parts including the glazed timber extension within the area Blue Shaded Area on the site location plan, as shown in the photographs in Appendix 2. 5) Remove from the land the portable toilet, foul waste channel and connection(s) to any cesspits or discharge outlets and all its constituent parts within the Blue Shaded Area on the site location plan, as shown in the photographs in Appendix 2. 6) Remove from the land all laid surfacing, paving slabs and residential and domestic paraphernalia within the Blue Shaded Area on the site location plan, as shown in the photographs provided in Appendix 2. 7) Remove from the land all commercial and private domestic vehicles and trailers within the Blue Shaded Area on the site location plan. Excluding those used in association with the Dock, as shown in the photographs provided in Appendix 2. 8) Remove from the land all resultant materials generated through compliance with steps 1-7 above. 9) Restore the land within the Blue Shaded Area on the site location plan to its condition before the breach took place by levelling the ground areas impacted by the unauthorised development, (including where the siting of the workshop, metal works installations, vehicles, trailers, caravans and portable toilets has occurred) with that of the adjacent unspoilt land, then lay down topsoil to a depth of 30cm and re-seed those parts of the land with meadow grass.

- The periods for compliance with the requirements are: 3 months for steps 1-8 and 6 months for step 9.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. 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.
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Appeal C Ref: APP/P1615/C/22/3303143

Land Adjoining Bullo Pill Dock, Bullo Pill, Newnham, Gloucestershire, GL14 1ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Darren Larkham against an enforcement notice issued by Forest of Dean District Council.
 - The notice, numbered EN/0096/20, was issued on 15 June 2022.
 - The breach of planning control as alleged in the notice is Without planning permission a material change of use of land through the use of boats and barge, in and out of the water/dock area and on adjacent land, for residential purpose.
 - The requirements of the notice are within the green shaded area outlined within the red line on the attached location plan: 1) cease the residential use of the boats and barge within the red line on the site location plan; 2) remove from the land to the northern side of the dock the barge and decking areas and associated residential paraphernalia as shown in the photographs within appendix 2, and disconnect all services and facilities (electric, gas, water and drainage) connected to the barge within the green shaded area on the site location plan; 3) remove from the land all residential paraphernalia associated with the boats on the land, as shown in the photographs within appendix 2, within the green shaded area on the site location plan; 4) remove from the land all resultant materials generated through compliance with steps 1-4 above within the green shaded area on the site location plan; 5) restore the land within the green shaded area on the site location plan to its condition before the breach took place and specifically in the area where the barge is located by levelling the ground areas impacted by the unauthorised development, (barge and associated decking area, vehicle parking area) with that of the adjacent unspoilt land, then lay down topsoil to a depth of 30cm and re-seed those parts of the land with meadow grass.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. 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.
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Decisions

Appeal A – 3303152

1. 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 1990 Act as amended

Appeal B - 3303146

2. 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 1990 Act as amended.

Appeal C – 3303142

3. It is directed that the enforcement notice is varied by adding to the end of requirement 1 the words *"Except for the two boats known as 'M V Chairman' and 'Fucking A'"* and to the end of requirement 3 the words *"Except for that associated with the two boats known as 'M V Chairman' and 'Fucking A'"*
4. Subject to these variations, 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 1990 Act as amended.

Preliminary Matters

5. The Council issued 3 notices, all with the same reference number but covering different parts of the overall site and with different allegations. The notices are distinguished by the different coloured shading on the plans denoting which areas of the overall site they refer to. Thus, Appeal A covers the Yellow land, Appeal B covers the Blue land and Appeal C covers the Green Land.
6. The Blue land was subject to 2 appeals, this Appeal B and another (APP/C/22/3302699) which was made by Mr Vanaria, who is a travelling showperson. However, that appeal has been withdrawn as the appellant had vacated the site and no evidence concerning Mr Vanaria or the need for a travelling showpersons site has been put before me. I shall therefore assume Appeal B is for general residential use of the caravans and campervans. Although as we shall see below, that is also not clear.

The Site

7. Bullo Pill is an area of land sandwiched between the railway and river Severn. At its centre is an historic dock which is within the green land of Appeal C, and, at the time of my site visit was filled with old barges and other boats in various states of disrepair. To the south of the dock is a large metal workshop that is currently in use and is not part of the enforcement action, then a long, narrow strip of land running along the bank of the Severn, which is the yellow land of Appeal A. Towards the end of this strip of land is a mobile home, 'Balmoral'. The land appeared to be hard surfaced and ended just beyond the mobile home in a turning and parking area.
8. To the north of the dock is a strip of land containing a narrow boat on blocks which is also on the green land and beyond that a much larger, roughly

triangular, area which is the blue land of Appeal B. At the time of my site visit this had been largely cleared, but was partially overgrown and still had a few boats, a camper van, some other vehicles and a large mobile crane on it. There was now no sign of anyone living in any of the vehicles, but I did not look in any of them. I presume this was the area occupied by Mr Vanaria who has now gone. Inland between the blue land and the railway is a cluster of houses and the whole area is accessed under a railway bridge and down a narrow track that feeds onto the A48.

9. The yellow land notice alleged the stationing of more than one caravan for residential purposes but it would seem that only Balmoral remains. Nevertheless, there seems no doubt that at the time it was issued there was more than one. Similarly the blue land notice alleges more than one residential caravan and campervans, a workshop in a shipping container and associated paraphernalia. Again it seems most of this has been removed, or the residential uses ceased, but nevertheless, there seems no doubt that at the time the notice was issued these allegations were correct and no grounds (b) or (c) have been argued. I shall therefore deal with the appeals on the basis of the matters alleged. The green land notice identifies boats in the plural and a barge. The photographs attached to the notice show two large boats in the dock, both of which looked like ones I saw there, although there were other smaller boats as well, and the barge on dry land that is still there. I shall treat the notice and appeal as covering all the boats and barges that have been or may still be occupied residentially.

Appeal A – Ground (a)

10. It is far from clear what the appellant wants the ground (a) to include. He says there is only one caravan left (Balmoral) and that is used to house a security person and also for the welfare of travelling seamen and it houses a ship to shore communication system. He also says he wants to develop the site for tourism purposes and seeks to regularise a diversified rural business. An application was made for a tourism use of 8 caravans, but this was refused in May 2022, just before the issue of the notice. This latter use is not part of the allegation and is not before me, I can only consider the retention of the residential caravans, and to this end it would appear that only 1 is now required.
11. The reasons for issuing the notice are that it is an unsustainable location, it is within flood zone 3 and the junction with the A48 is substandard. The question of locational sustainability has been considered at a recent appeal¹. The A48 is a busy class 1 highway which is hostile to cyclists. The nearest village is Newnham on Severn which is much too far to walk. Although there is a bus service along the A48 to Newnham this is so close (in motorised transport terms) that residents would be almost certain to prefer using their cars, rather than walking up to the main road and waiting for a bus and repeating the exercise on the return. I agree with the previous Inspector that any residential development at Bullo Pill is most likely to depend on private cars for any journey beyond the hamlet itself.
12. The issue of highway safety was also considered at the previous appeal. At present the access onto the A48 from Bullo Pill is seriously sub-standard. Visibility to the north is insufficient and likely to get worse if roadside hedges

¹ APP/P1615/W/16/3143912 Issued 6 December 2016

are not maintained. The Inspector concluded that any material increase in traffic using the junction would be unacceptable. In that case the appeal was for 8 units and this is only for 1. However, if the junction is dangerous then it is dangerous whether the increase in traffic is large or small. There is also the question of cumulative effect with the caravans subject to appeal B and the boats in appeal C.

13. The most significant objection however is flooding. The site lies right on the banks of the Severn in flood zone 3. The NPPF designates caravans for residential occupation as 'highly vulnerable'. The NPPF requires a sequential test to be carried out to steer development to less dangerous areas. Clearly the mobile home fails the sequential test as there is plenty of land, even in Bullo that is not in flood zone 3. Therefore, to be successful the site should pass the exception tests and both provide wider sustainability benefits to the community as well as being safe in its own lifetime. No details have been provided with this appeal but for the previous planning application various reports were prepared. They show the area is at high risk of flooding and that to be safe the floor level of the caravans (or mobile home in this case) would have to be raised by both building up the land and then putting them on blocks.
14. The unlawful building up of the land is another element of the notice that the Council seek to stop, but not necessarily to reduce. However, it would seem that further land raising would be required which would be in direct contravention of the notice. It is also unclear what wider community benefits there would be. The agent argues the appellant's use of the site safeguards the historic dock and will help regenerate it. However, the caravan is not for the appellant. He has also already shown a cavalier disregard for the protection of the historic asset by unlawfully raising land levels and quite likely destroying historic evidence of a former tramway and other dock side elements. The use of the site clearly fails the exception test and should not be used for permanent residential uses.
15. The appellant argues the mobile home will actually be used for an on-site security person. However, no evidence for the need for a permanent security presence has been provided. The mobile home is some way from the dock and the activity associated with the workshop. There is a history of visits by the Council when several more mobile homes were on the land and it does not seem that any were used solely by a security person then. The occupants were claimed to be either foreign workers at the dock or seamen staying overnight, but at one time one mobile home was alleged to be occupied by a worker for "mooring, security and safety reasons". Though what exactly their duties were is uncertain. The current appeal is for a security person, but also the operation of ship to shore communication and the welfare of visiting seamen. How this is all accommodated in the single unit is not explained, or even what it actually all means. On balance there doesn't seem to be any evidenced need for a security presence on the site and a permanent residential use would be in a location dependent on private motor vehicles, with a dangerous access and in flood zone 3, contrary to the NPPF and CSP1, 2 and 4 of the Core Strategy.
16. The Council accept they do not have a 5 year supply of housing land but the issue of flooding provides a clear reason for refusing the development and so paragraph 11 of the NPPF is not triggered. The appeal on ground (a) fails.

Appeal A – Grounds (f) and (g)

17. The first four requirements refer to the mobile homes and their removal. As there is no case for a permanent residential use then there are no lesser steps that would achieve this. The fifth requirement is to cease importing materials onto the site and no argument to the contrary has been made. If these requirements have already mostly been carried out (albeit with 1 mobile home still on site) then the amount of work for the appellant is reduced, but the requirements are related to the allegation and the situation at the time the notice was issued so they need to remain. The appeal on ground (f) fails.
18. As to ground (g) no argument has been made why 3 months is too short and no explanation for the suggested 12 month period has been provided. It seems to me 3 months is plenty of time to remove the one remaining mobile home, and for the occupant, if there is one, to find alternative accommodation. The appeal on ground (g) fails.

Appeal B – Ground (a)

19. This appeal covers the blue land to the north of the historic dock. As noted above most of the site has been cleared except for a few boats, a campervan, crane and some other vehicles. It did not seem to be being used for the stationing of caravans for residential purposes, but I did not look inside any of the vehicles. In any event, there is no dispute that when the notice was issued there were residential uses on the land and a workshop belonging to Mr Vanaria which has now gone.
20. It is not clear what the ground (a) appeal is for but given there is no mention of Mr Vanaria's activities I assume it is to gain permission for the stationing of a number of caravans for residential uses. Although there is no flooding issue here (most of the site is outside of flood zones 2 and 3), the issue of a number of residential uses on the land is much closer to that considered by the previous Inspector. In this case the extra numbers mean the sustainability and access issues discussed above for Appeal A are somewhat magnified as there will be more people and traffic. A further issue is the impact on the adjacent heritage asset. The historic dock forms the southern boundary of the site while Dock Cottage is on the north-west corner. The setting of both has the potential to be affected by the use of the land and both are grade II listed.
21. The site as I saw it was scruffy and had a partly abandoned air. When it was occupied the Council described it as ramshackle and sprawling and this is borne out by the photographs attached to the notice. Quite obviously this detracts from the setting of the two heritage assets and in the terminology of the NPPF causes less than substantial harm. The public good argument advanced by the appellant is again that use of the site helps with the regeneration of the historic dock although exactly how is not clear. There is no evidence of what form this regeneration might take or why allowing residential uses on the blue land would contribute. There is also mention of the need for infrastructure to run the port, but again what this might be and how it relates to appeal is unclear. There are thus no public benefits to outweigh the harm to the heritage assets.
22. Even if the site was cleared and a neat and tidy caravan park established (the likelihood of which I have no evidence for at all), it would still sit uneasily between the houses of Bullo Pill, including the listed Dock House and the dock

itself. Residential caravans are not a feature of the site (except for unlawful ones) and it would be out of place and harm the setting of the heritage assets.

23. There is a mention of an historic use of the site for residential purposes in association with the dock, but apart from the possibility of lawful occupation of some of the boats and barges, there is no evidence to support this. Occupation of a boat at a dock is a quite different thing to a mobile home or caravan.
24. The use of the site for the stationing of caravans for residential purposes is thus contrary to the NPPF and policies CPS1 and AP4 and AP5 of the development plan. The Council accept they do not have a 5 year supply of housing land but the issue of harm to the heritage assets provides a clear reason for refusing the development and so paragraph 11 of the NPPF is not triggered.

Appeal B – Grounds (f) and (g)

25. The ground (f) arguments are that the metal workshop is not in the control of the appellant and the dock needs infrastructure to operate. The metal workshop has now gone, but as it was on the appellant's land I do not understand the lack of control argument. Nor do I understand how the residential caravans help with the running of the dock. There is also a comment that the 'facility' needs to remain open to help with regeneration. I assume this means the dock itself? But the notice does not affect the operation of the dock, just the unlawful uses on the blue land. No lesser steps have been suggested and the requirements to remove the offending residential uses, workshop, toilet, stored vehicles and related paraphernalia all seem reasonable.
26. The notice gives the appellant 3 months to comply. I note that all the residential users were given notice to quit by November 2021, and there was little evidence of anyone living there when I visited. As the notice to quit was served over 2 years ago it seems that, if anyone is still there, another 3 months from the issue of this decision is not unreasonable.

Appeal C – Grounds (c) and (d)

27. The appeal on ground (c) is that the boats have planning permission for residential use through the passage of time, but that is a matter for ground (d), so there is no actual ground (c) appeal.
28. The appellant has provided no evidence for the ground (d) appeal but relies on the boat occupiers themselves to deal with this. I have no representations from any of them. However, the Council accept that on the basis of Council Tax records two of the boats in the dock have been occupied residentially for over 10 years. These are 'M V Charmain' and the barge known as 'Fucking A'. The Council accept these are immune from enforcement action.
29. There is also evidence concerning the barge on dry land to the north of the dock. Mr Snell who is the occupier filled in a PCN stating he had been there for longer than 4 years, but this is disputed by the Council who have an aerial photograph from June 2018 which clearly shows the barge is not there. The Council Tax records also show Mr Snell only paying tax from October 2019.
30. I would agree with the Council the barge is more akin to a mobile home, which is craned onto a site, but is still considered to be a caravan. In that sense the

barge is a moveable structure that is not fixed to the ground but rests under its own weight. Whether it has ever been moved or what the intention of the owner is towards I do not know but on the evidence I have I would agree it is a movable structure that has been stationed on the land for residential purposes. As such it represents a material change of use for which 10 years is the appropriate time. However, even if I am wrong the 4 year period begins on 15 June 2018 and the evidence suggests the barge was not on the land at that date.

31. There is at least one other boat, called 'Teon' which the Council allege is being used residentially and I have no evidence concerning that at all. The appeal on ground (d) thus fails, except for the two boats that have achieved immunity.

Appeal C – Ground (a)

32. I have already discussed the issue of the locational sustainability of the site and the increased use of the access onto the A48, and these matters weigh against the appeal.
33. As in the blue land, there is also an issue of impact on the heritage assets, the dock and the dock cottage. The issue is virtually the same for the barge on dry land and its associated residential paraphernalia. It sits uneasily between the dock and the cottage beyond and introduces an alien residential structure onto the land adjacent to the dock. The other boats are less harmful in themselves as they are within the dock itself. However, as the Council's photographs show there is a cumulative impact of the residential uses through their associated paraphernalia that detracts from the setting of the historic dock and compromises its appreciation.
34. This amounts to less than substantial harm in terms of the NPPF. As in the blue land appeal the appellant argues the uses are historic and important for regeneration purposes. But residential boats are not a historic feature of the working dock and there is no evidence concerning the relevance of the matters alleged and their role in regeneration. I can find no public benefits to outweigh the harm to the heritage assets which weighs against the appeal.
35. As to the other matters raised by the appellant, the matters alleged do not seem to have any link to a possible future tourism use and the fact that it is brownfield land does not mean harmful development should be allowed. The Council accept they do not have a 5 year supply of housing land, but the issue of harm to heritage assets provides a clear reason for refusing the development and so paragraph 11 of the NPPF is not triggered.

Appeal C – Ground (f)

36. I shall vary the notice to exclude the two boats that are immune from enforcement action from requirements 1 and 3.
37. The notice does not require any services to be removed that facilitate the operation of the dock, only those enabling the barge to be used residentially. The term residential paraphernalia is well known and refers simply to all the external things associated with living in a barge or boat, washing lines, picnic benches, BBQs, outdoor storage and so on. I don't agree that step 2 is void for uncertainty, it is perfectly clear what needs to be done. There is no requirement to import materials (except for some topsoil). It is not explained why removing any dumped materials that have raised the land would require

'expert analysis' and the appellant is in the best place to know what has been imported and so should be removed.

Appeal C – ground (g)

38. It is not explained why the occupiers of the boats who will be required to leave the site need more than 6 months to find alternative accommodation. The Council have provided details of a number of houses that were for rent or sale in the area and I have no reason to think the situation has changed materially now. 6 months seems plenty of time to relocate and remove the offending boats.

Conclusion

39. I shall dismiss all three appeals.

Simon Hand

INSPECTOR