

Appeal Decisions

Site visit made on 23 January 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal A: APP/V2255/C/22/3299109

Land adjacent to Cat-C-Vu, Preston Hall Gardens, Warden, Kent ME12 4PL

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 Thomas Philip Hannan against a notice issued by Swale Borough Council.
 - The notice was issued on 26 April 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the Land to the stationing of a mobile home for residential use.
 - The requirements of the notice are:
 - (i) Cease the residential use of the Land.
 - (ii) Cease the residential use of the mobile home on the Land.
 - (iii) Remove the mobile home from the Land.
 - (iv) Remove from the Land all materials, rubbish and waste arising from the works undertaken in (i) to (iii) above.
 - The period for compliance with the requirements is within six (6) months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: APP/V2255/W/22/3293558

Cliff End Mobile Home, Preston Hall Gardens, Warden, Sheerness, Kent ME12 4PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Thomas Hannan against the decision of Swale Borough Council.
 - The application Ref 20/500812/FULL, dated 9 February 2020 was refused by notice dated 18 August 2021.
 - The development proposed is described as '*Change of use of land to residential for existing mobile home sited on land adj JR's.*'
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Formal Decisions

Appeal A

1. It is directed that the alleged breach of planning control, as set out in the enforcement notice, is deleted and reworded as follows:

‘Without planning permission, the material change in the use of the land, involving the stationing of a caravan and its use for residential purposes constituting the creation of a new independent planning unit.’

2. Subject to this correction 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

3. The appeal is dismissed.

Matters concerning the Enforcement Notice (Appeal A)

4. Given that the notice was not appealed on either grounds (b) and (c) I am satisfied that a breach of planning control has occurred in this instance. However, the Council says that the land was previously used as residential garden in association with the residential dwelling immediately to the east, JR’s.
5. The land was later subdivided and a new planning unit then created when the mobile home was brought onto the land and occupied independently for residential purposes. In the circumstances the enforcement notice’s allegation is, not sufficiently precise in its wording to reflect the actual breach.
6. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
7. In this particular instance the breach has effectively arisen due to the severance of the land from JR’s and the effective establishment of a new, independent planning unit. I consider that the allegation, as it stands, requires clarification and it is capable of correction without injustice being caused. Accordingly, I have changed its wording to better reflect the breach which has occurred.

Appeal A

The appeal on ground (d)

8. The appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms.
9. The stationing of a mobile home/caravan and its occupation for residential purposes represents a use of land requiring the benefit of planning permission. The immunity period for such is ten years prior to the issue of the enforcement notice; in this instance, therefore, 26 April 2012, and this is known as the material date. Accordingly, the appellant needs to demonstrate that the unauthorised change of use has occurred continuously since at least this date.
10. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. Accordingly, my decision has to be based on evidential fact and, where applicable, case law.

11. The appellant, in his representations, on the appeal form completed in May 2022, says that he has lived in the mobile home on the site for the past 7 years. This reiterates his assertion on the application form, relating to Appeal B, that the use commenced in July 2015.
12. The appellant does also say that there have been various motor-homes on the site for over 20 years but this is not properly corroborated by written representations made in support of the use. These make reference to a single caravan having been present on the land for many years. However, a letter of objection refers to a 'dilapidated caravan' on the land which was removed by a previous occupier of JR's. She had apparently lived there since 2005 and, given the site's history taken from the evidence before me, I have reasonably assumed that the said caravan was removed from the land prior to its subdivision.
13. Given the evidence and my consequent findings that the appellant cannot demonstrate that the residential use of the land enforced against commenced before the material date in 2012 the requisite immunity does not, on the balance of probability, exist.
14. As such, the appeal on ground (d) does not succeed.

The appeal on ground (a) – the deemed planning application (DPA), and also Appeal B

Main Issues

15. Given that the DPA and the s78 appeal are seeking planning permission for the same development the main issues are the same for both Appeals A and B. These are whether the proposal represents an acceptable form of development having regard to the following matters:
 - 1) the effect of the development on the character and appearance of the area, with particular regard to the mobile-home's siting and design;
 - 2) the effects of the development on the living conditions of neighbouring occupiers, with particular regard to those at Cat-C-Vu;
 - 3) whether the mobile home provides for a satisfactory standard of living accommodation for its occupier; and
 - 4) whether the proposal would affect the integrity of the Special Protection Area (SPA) and, if not, the appropriateness of mitigation in this regard.

Reasons

Character and appearance

16. Preston Hall Gardens is an unmade road off which, consistent with other roads in the locality, is one of residential character. However, there is no common characteristic in terms of plot size or style of dwelling or type of home. There are clear variations in height, extent, building lines and boundary treatment. Along the road a large number of single-storey bungalows are evident.
17. The road slopes down eastwards towards the coast. The appeal site containing the mobile home at issue is the last plot before the Cliff Drive junction save for the single-storey, flat-roofed dwelling known as JR's. This lies off the junction, and is set into its site.

18. In light of the above I must disagree with the Council's view that there is a 'conventional built vernacular'. To illustrate the variety of buildings a somewhat looming dwelling with a steep roof pitch, and built on high ground on the opposite side of Preston Hall Gardens looks out towards JR's. Also, beyond the appeal site's western boundary is a substantial post-war dwelling, set on slightly higher ground, and with its gable end facing the common boundary. Further, there are a considerable number of relatively small, irregular shaped plots towards the eastern ends of Preston Hall Gardens and Sea Approach, which lies southwards.
19. In this contextual setting, whilst the mobile home is not a building as such, its form is not overly conspicuous and its appearance and siting does not unreasonably detract from the rather loose integrity of the streetscene.
20. In the circumstances I am satisfied that the development has not caused any significant harm to the character and appearance of the surrounding nor the general objectives and requirements of policies DM14 and CP4 of the Swale Borough Local Plan (LP), adopted in 2017.

Living conditions

21. The mobile home's rear wall panel faces towards the boundary enclosure with Cat-C-Vu. However, there is little rear aspect and the boundary is both physically demarcated and screened with vegetation growing from the Cat-C-Vu's side. This neighbouring house has two flank-wall windows – one each at ground and first floor levels – but neither appear to light habitable rooms. Certainly, neither can be termed as primary windows thereto.
22. I note that the occupier of Cat-C-Vu has objected to the development on two separate grounds; one relating to her considered loss of privacy, and the other in respect of alleged noise and vibration disturbance from the appellant's generator. Her representations also mentioned nuisance due to smoke from a wood burning stove. In terms of the latter points I note that the Council's Environmental Protection team has raised no objections.
23. Regarding the privacy issue the Council's case report comments that, on balance, the physical relationship between the two properties is not unacceptable, although the report does mention that the land has been raised. This might be the case but the appeal site's land level is still lower than that of Cat-C-Vu.
24. In the circumstances I do not consider that the development has had an unacceptable impact on the living conditions at Cat-C-Vu, and there is no material conflict with LP policy DM14.

Standard of accommodation

25. The appellant, as mentioned, will have lived in the mobile home for 9 years in July. He lives alone and I am satisfied that the floor area and the standard of accommodation is quite adequate for one person. Nonetheless, I accept that this mobile home is of limited size and it would not be suitable for family accommodation.
26. Any planning permission granted could, by condition, be made personal to the occupier and require for the mobile home's removal at the time at which he vacates the site. This would mean that, upon this date the permission would expire and the mobile home's removal from the land would be required.

27. Accordingly, given the circumstances, I am again satisfied that the aims and requirements of LP policy DM14 would not be compromised by the development.

Integrity of the SPA

28. The appeal site is located within 6km of the Thames Estuary and Marshes SPA which provide habitats for overwintering birds. Within this zone Natural England considers that new housing has the potential to affect the SPA's features of interest. In combination with other developments in Swale an additional dwelling would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPA. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy.
29. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. Natural England concurs with this approach. Contributions will be forwarded to Birdwise which is the brand name of the SAMM Board that is made up of a partnership of local authorities, developers and environmental organisations.
30. Although the Council mentions that a standard form relating to a Unilateral Undertaking planning obligation for the financial contribution was sent to the appellant, and I understand that the appellant has previously indicated a willingness to pay, the Council has confirmed that the requisite sum has not been paid.
31. The government's Planning Practice Guidance indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice. A high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. This would normally be done by means of a planning obligation.
32. In the absence of the said contribution towards the interests of mitigation I have concluded that the development has the potential to adversely affect the integrity of the SPA, and this would be in conflict with LP policy DM28 which reflects the Regulations and seeks to conserve and enhance biodiversity generally.

Other Considerations.

Housing supply

33. The Council, at the time its case report was written, indicates it could not currently demonstrate a 5 year housing land supply and, therefore paragraph 11d of the National Planning Policy Framework (the Framework) is triggered. I have seen no subsequent evidence otherwise in relation to this appeal but, even so, the absence of any mitigation secured against resultant ecological harm to the SPA must override even if a 5 year supply could now be demonstrated.

Human Rights Act

34. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this

right except such as is in accordance with the law and which is necessary, amongst other things, for the protection of the rights and freedoms of others.

35. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
36. Personal circumstances are themselves capable of being a material consideration in a planning case and this is well established in law. In this particular instance, whilst I have taken into account relevant policies which, in the main, would guard against the development, I consider that the displacement of Mr Hannan from this very modest development, which is his sole residence, would result in him being made homeless and thereby suffering a significant degree of hardship.
37. Given the rather low key nature of occupation I afford the appellant's personal circumstances as carrying significant weight.

Planning Balance

38. I have found no harm in relation to three of the four main issues I have identified. I also have concerns that the appellant would stand to lose his home. However, he does not benefit from any special dispensation giving exemption from the said necessary financial contribution. He has indicated a willingness to pay this but has not followed it up.
39. There is no mechanism available to me to secure this and thereby, were I to allow the appeal, I could not make any planning permission dependant on the said contribution. In the circumstances, I cannot allow this appeal. This does leave the door open to the appellant making a new planning application to the Council which, if approved, would override the requirements of the upheld enforcement notice, for which full compliance is required within six months from the date of this decision.
40. As mentioned, it would be open to the Council to consider a personal permission given the circumstances and the opportunity would also arise to control the site's layout. Nonetheless, these are matters for negotiation between the two main parties and the onus, in the first instance, is on the appellant, otherwise, the requirements of the enforcement notice should be met to avoid the possibility of prosecution.

Conclusion

41. For the reasons given above, and having had regard to all matters raised, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
42. Appeal B is dismissed for the same reasons.

Timothy C King

INSPECTOR