



Appeal Decisions

Site visit made on 30 January 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 12th March 2024

Appeal A Ref: APP/Y2620/C/22/3303521

Land south of Unit 4, RS Car Sales, Hempton Road, Fakenham NR21 7LA

- 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 Shaun Brooker, RS Car Sales and Vehicle Hire Ltd against an enforcement notice issued by North Norfolk District Council.
- The enforcement notice was issued on 14 July 2022.
- The breach of planning control as alleged in the notice is, without planning permission, material change of use of The Land for the siting of a static caravan to provide overnight accommodation for security staff.
- The requirements of the notice are:
 - i. Remove the static caravan from The Land.
 - ii. Remove all residential paraphernalia from The Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (a), (f) and (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.

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

Appeal B Ref: APP/Y2620/W/22/3301275

RS Vehicle Hire, Hempton Road, Fakenham NR21 7LA

- 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 Shaun Brooker, RS Vehicle Hire against the decision of North Norfolk District Council.
- The application Ref PF/21/3158, dated 23 November 2021, was refused by notice dated 31 January 2022.
- The development proposed is the siting of a static caravan to provide overnight security accommodation.

Summary of Decision: The appeal is dismissed.

Appeal C Ref: APP/Y2620/X/22/3306065

Unit 4, The Hempton Road Business Park, Hempton Road, Fakenham NR21 7LA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Shaun Brooker, RS Car Sales and Vehicle Hire Ltd against the decision of North Norfolk District Council.

- The application Ref CL/22/1552, dated 21 June 2022, was refused by notice dated 26 August 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is change of use from 'countryside' to open storage B8 use.

Summary of Decision: The appeal is dismissed.

APPEALS A & B

Appeal A – The Enforcement Notice

1. The appellant's submissions on ground (e) are that the notice refers to the Land to which it relates as "South of Unit 4, RS Car Sales" but "RS Car Sales" does not exist. However, such submissions do not go to the ground (e) appeal but rather the validity of the notice.
2. The legal owner of the Land is said to be RS Car Sales and Vehicle Hire Ltd, rather than RS Car Sales. I nevertheless saw from my site visit that RS Car Sales operates from a unit on Hempton Road to the north of the Land. Thus, in terms of identifying the location of the Land, there is no misdescription in the notice with the reference to RS Car Sales. The notice therefore complies with the requirements of S173(10) and ENAR4(c)¹ in respect of identifying the land to which it relates.
3. The enforcement notice does, however, identify the Land to which it relates by reference to a plan attached to it. It was apparent from my site visit that the alleged breach was taking place on only part of the Land edged in red on the plan. There is no reason to conclude that was not the case at the time the notice was issued. It would be open to me to correct the plan to reduce the red edge in size accordingly. The LPA has provided an amended plan and I am satisfied that I can correct the notice to amend the plan without injustice to the appellant or the LPA.

Appeal A on ground (e)

4. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by S172 of the 1990 Act. S172(2) of the Act states that a copy of an enforcement notice shall be served – (a) on the owners and on the occupier of the land to which it relates: and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. As set out above, the appellant's submissions on ground (e) go to the validity of the notice rather than whether the notice was properly served. As it is, there is little evidence that either occupiers of the Land or a person with an interest in the Land has not been served with a copy of the notice.
6. The appeal on ground (e) therefore fails.

Appeal A on ground (a) and Appeal B

Procedural Matters

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

7. When an appeal on ground (a) is made, an application for planning permission is deemed to have been made for the development specified as constituting a breach of planning control in the notice. The terms of the deemed application are derived directly from the matters stated as constituting a breach in the notice.
8. The development subject of the notice in Appeal A and that subject of the planning application in Appeal B are essentially the same. Likewise, the LPA's reasons for issuing the notice are the same as those for which it refused planning permission. I have therefore dealt with the appeals together to avoid repetition, but have nevertheless considered and concluded upon them separately.

Main Issues

9. The main issues for both appeals are:
 - whether the material change of the use of the Land for the siting of a caravan for overnight accommodation would comply with local plan and national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - whether the appeal site is an appropriate location for residential development, having regard to local and national planning policies which seek to control residential development in the countryside.

Flood Risk

10. The Land lies within Flood Zone 2. Policy EN10 of the North Norfolk Local Development Framework Core Strategy September 2008 (the CS) states that the sequential test will be applied rigorously across North Norfolk and most new development should be located in Flood Zone 1. New development in Flood Risk Zone 2 will be restricted to: water compatible development; minor development; changes of use (to an equal or lower risk category in the flood risk vulnerability classification) where there is no operational development; and, less vulnerable uses where the sequential test has been passed.
11. Paragraph 165 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
12. The use of the Land for the siting of a residential caravan does not amount to water compatible development. Nor does it comprise minor development which CS Policy EN10 defines as minor non-residential extensions, alterations, or householder development. The development does also not constitute a less vulnerable use. Caravans intended for permanent residential use are classified as highly vulnerable in Annex 3 of the Framework.
13. The notice does not identify the previous use of the Land before the breach took place. The appellant argues that the lawful use of the Land is a storage use. Storage and distribution falls within the less vulnerable category in Annex 3 of the Framework. Thus, on the appellant's submissions, the change of use from a storage use to the siting of a caravan for residential use would be a change of use to a higher risk category in the flood risk vulnerability classification. As a result, the development conflicts with all of the restrictions for new development in Flood Zone 2 set out in CS Policy EN10.

14. Footnote 59 of the Framework states that a site-specific flood risk assessment (FRA) should be provided for all development in Flood Zones 2 and 3. The appellant states that an FRA has been commissioned. However, there is no FRA before me. Thus, the appellant has not demonstrated that the development has taken account of the risks of flooding from all sources, the potential to increase flooding elsewhere, measures to deal with these effects and risks, nor has it provided evidence to allow the LPA to apply the Sequential Test.
15. The appellant indicates that the Land lies on the periphery of the flood zone. However, the mapping provided by the LPA clearly shows the Land lies within Flood Zone 2. Likewise, the fact that the appellant claims no flooding has occurred on the Land to date does not mean there is no risk of flooding in the future.
16. I conclude, therefore, that the developments fail to comply with local plan and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. There is, as such, conflict with Policy EN10 of the CS and the Framework.

Essential Need

17. The LPA indicates that the Land lies in the countryside, outside of any defined settlement boundary. Paragraph 89 of the Framework states that planning decisions should avoid the development of isolated homes in the countryside, unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
18. The appellant argues that the Land is not in an isolated countryside location. I was able to see from my site visit that the it is adjacent to a distinctly urban area, close to Fakenham town centre. I accept therefore that the development does not constitute an isolated home in the countryside.
19. Nevertheless, CS Policy SS2 states that development in such locations will be limited to that which requires a rural location and is for one of a number of exceptions. The material change of use of land to the siting of a caravan for residential purposes is not one of the exceptions.
20. The appellant has proffered little evidence to suggest there is a need for an agricultural or forestry worker to live on the Land near their place of work. Nor is there any evidence that the developments amount to affordable housing in accordance with the Council's rural exception site policy. Overall, there is no evidence before me that the developments meet any exceptions listed under CS Policy SS2.
21. Indeed, the appellant indicates that they are seeking a temporary permission for two years to allow the occupant reasonable time to source another property to live in and to be able to assess and deal with the security issues at the site. This suggests the appellant does not argue that the security issue it says exist necessitate a full-time worker to live on the Land near their place of work. This is compounded by the appellant's submission that there are suitable properties available to rent in Fakenham.
22. I conclude, therefore, that it has not been demonstrated that the Land is an appropriate location for residential development, having regard to local and national planning policies which seek to control residential development in the countryside. There is, as such, conflict with CS Policy SS2 and the Framework.

Other Matters

23. The appellant says that the Land has been used for storage for in excess of 10 years and therefore the siting of the caravan is exempt from enforcement action. The question as to whether the Land is immune from enforcement action in respect of storage use is one I will return to in Appeal C. In any event, it does little in any event to assist the appellant in respect of Appeal A or B, since the development for my consideration is the material change of use of the Land to the siting of a caravan for overnight accommodation, not for open storage. It seems to me that there is a material difference between the use of Land to site a caravan for a person to occupy as overnight residential accommodation than simply storing a caravan for a future use. As a result, even if I were to conclude on Appeal C that the Land can lawfully be used for storage, this would add very little weight in support of the grant of planning permission for a material change of use of the Land to the siting of a caravan for overnight accommodation. Whether it is excessive to require the removal of the caravan on that basis, is a matter which I will address on ground (f).

Human Rights

24. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the use of the Land for residential purposes would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
25. I acknowledge that the consequence of dismissing the appeal would be that the occupant of the caravan would lose their home. However, the notice provides a six-month compliance period which would allow them time to find an alternative home. Moreover, there is no indication that those persons would necessarily be made homeless beyond that date.
26. As a result, the planning harm I have identified in terms of flood risk and the location of the development is of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Conclusion – Appeal A

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Conclusion – Appeal B

28. For the reasons given above I conclude that the appeal should be dismissed.

Appeal A on ground (f)

29. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

30. S173(4) of the Act sets out that the purpose of an enforcement is either, (a) to remedy the breach of planning control, or (b) to remedy any injury to amenity caused by the breach.
31. The notice does not state which of the two purposes it seeks to achieve. However, it requires the caravan and all residential paraphernalia to be removed from the Land. This has the effect of remedying the breach of planning control. I am satisfied therefore that the purpose of the notice falls under S173(4)(a).
32. The appellant argues that the requirement to remove the caravan is excessive, since, they say, it can be lawfully stored on the Land. However, the siting of the caravan has been integral to the material change of use of the Land to residential. Indeed, the material change of use would not have taken place if the caravan had not been sited. On that basis, even if the caravan could be sited on the Land for some other lawful use, it is not excessive for the notice to require its removal since it is part and parcel of the making of the breach of planning control. On that basis, there are no lesser steps than removing the caravan and residential paraphernalia that would remedy the breach.
33. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

34. An appeal on ground (g) is made on the basis that the time for compliance with the requirements of the notice is excessive.
35. The notice provides for a compliance period of six months. The appellant argues that two years is needed to find alternative accommodation. However, two years would be excessive and would fail to deal with the harm with the necessary expediency. I find six months is a reasonable and proportionate period for the occupants to seek alternative accommodation.
36. The appeal on ground (g) therefore fails.

APPEAL C

Procedural Matters

37. The LDC application was made on a form for a certificate of proposed use or development which falls under S192 of the Act. However, the appellant indicated that the development had already taken place and the LPA determined the application on that basis that it was for an existing use under S191. I have therefore determined the appeal on the same basis.

Main Issues

38. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded.

Reasons

39. S191(2) of the Act states that uses and operations are lawful at any time if - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

40. The appellant's case is that the use of the Land for storage is lawful because the time for enforcement action has expired. The development falls to be considered under S171B(3) of the Act which sets out that, in the case of a breach of planning control which is not operational development or the change of use of any building to a dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
41. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the change of use of the Land from countryside use to open storage B8 use took place on or before 21 June 2012 and the use continued without interruption for 10 years thereafter, such that the LPA could have taken enforcement action against the use at any time in that period.
42. The appellant states they began renting the Land in 2010, before purchasing it in 2021. A Statutory Declaration signed and dated by the appellant on 15 June 2022 states that the Land has been in use for the storage of vehicles and sundry items continuously without any breaks since 2010. Nonetheless, the appellant provides an aerial image said to be from 1999 which they say shows the material change of use to open B8 storage had taken place at that point. The image is low resolution, but the outline of what appears to be cars are located to the rear of the buildings to the north of the Land. The same is said of an image from August 2004, however, the image is of such low resolution that it is difficult to ascertain what, if anything, was present on the Land.
43. A series of aerial photographs have been provided which are said to show continuity of the use of the Land for storage. In 2007, the image shows the Land is partially hard surfacing and partially trees and vegetation. No cars or caravans are apparent on the image though, suggesting that, if the material change to storage had taken place on or before 1999, then it was no longer taking place in 2007.
44. The following image is said to be from 2010, although the image itself is undated. It shows several vehicles in situ on that part of the Land which was hard surface in the 2007 image. A subsequent image said to be from 2014 again shows vehicles on the Land. Some vegetation has been removed and hard surfacing laid. Vehicles are located further south and east into the Land than the previous image. The following image said to be from 2017 shows a larger expanse of hard surfacing and vehicles on the Land but some area laid to grass remains. The subsequent image said to be from 2020 appears to show part of the Land on the eastern side has been fenced off. No vehicles are within that part of the Land. Vehicles are shown on the western part of the Land.
45. The LPA refused the LDC application on the basis that the evidence did not point towards the entire Land having been in storage use for 10 or more years. It suggests an area to the east and south-east of the Land not being laid to hardstanding or having vehicles on it until some point between 2010 and 2014. The LPA does, however, consider that the part of the Land which is shown to be hard surfaced on the aerial images would appear to have been used for storage purposes for more than 10 years. It wrote to the appellant to this effect, providing a plan showing what it believed were the boundaries of the Land where storage use had been carried out for 10 or more years. However, the appellant disputed those boundaries in response.

46. It would be open to me under S193(4) of the Act to issue an LDC for part of the land specified in the application and have considered whether I can issue an LDC on that basis.
47. However, whilst acknowledging the LPA's position, the aerial images only provide a snapshot in time. Given the fact that years have elapsed between each image, they do not, to my mind, sufficiently discharge the burden of proof that the use of the Land for storage was continuous between those points.
48. Indeed, the aerial image from 2017 shows a significant part of the Land to the east and south-east laid to grass, with no indication of vehicles being stored upon it. There is, thus, no photographic evidence of the use on that part of the Land at any point and the areas laid to hard surfacing appear to fluctuate in size and location. In that respect, the images somewhat contradict, or rather, do not affirm, the appellant's submissions that the use has been continuous throughout the whole period.
49. In any event, none of the images demonstrate whether the Land was put to use for the storage of vehicles or for the parking of vehicles. The courts have drawn a distinction between the use of land for the parking of vehicles and the use of land for the storage of vehicles. In *Hickmet*² it was held that a car is parked when it is left in a convenient place for the resumption of the interrupted journey or for the start of the next journey. In contrast, the Court found that storage of a car implies taking a car off the road while it is not in current use. The difference lies in the circumstances in which the car is left. The appellant's case is that the vehicles have been stored on the Land. However, the aerial image does not sufficiently indicate whether that is the case, or whether the vehicles were being parked.
50. Thus, even if I were to agree with the LPA, given the evidence before me, I cannot point with sufficient precision to which parts of the Land were in use 10 or more years before the date of the LDC application.
51. The courts held in *Gabbitas*³ that if there is no evidence to contradict the appellant's version of events or make it less than probable, it should be accepted. However, their evidence must be sufficiently precise and unambiguous. For the reasons set out above, I am not satisfied that is the case here.
52. To that end, I find that the appellant has not demonstrated, on the balance of probabilities, that, at the date the LDC application was made, the material change of use of the Land edged in red on the plan submitted with the application from 'countryside' to open storage B8 use was lawful in the meaning of S191(1) of the Act on the basis that the time for taking enforcement action had expired.

Conclusion

53. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of change of use from 'countryside' to open storage B8 use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

² *Crawley B.C. v Hickmet Ltd* (1998) JPL 210

³ *Gabbitas v SSE & Newham BC* [1985] JPL 63

FORMAL DECISIONS

APPEAL A

54. It is directed that the enforcement notice be corrected by:

- the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

55. Subject to the correction, the appeal is dismissed, and 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

56. The appeal is dismissed.

APPEAL C

57. The appeal is dismissed.

J Whitfield

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by J Whitfield BA (Hons) DipTP MRTPI

**Land at: South of Unit 4, RS Car Sales, Hempton Road, Fakenham
NR21 7LA**

Reference: APP/Y2620/C/22/3303521

Scale: NTS



Notes