



Appeal Decisions

Site visit made on 20 February 2024

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal A Ref: APP/M2270/C/22/3294221

Appeal B Ref: APP/M2270/C/22/3294222

Land at Free Heath Buildings, Free Heath, Wadhurst, Kent

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Alexander Levitt (Appeal A) and Ms Stephanie Marfleet (Appeal B) against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice, numbered PF/T008803.2, was issued on 1 February 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land from agricultural to the mixed use of agriculture and the stationing of a mobile home for residential use.
- The requirements of the notice are to:
 1. Cease the residential use of the Land.
 2. Permanently remove from the Land the mobile home shown in its approximate position marked A on the attached plan¹.
 3. Remove all domestic paraphernalia associated with the unauthorised residential use from the Land.
- The period for compliance with the requirements is: Six (6) calendar months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. At the time of my site visit, it appeared that the mobile home was not being lived in. From looking through its windows, the mobile home appeared, instead, to be filled with a large number of stored items. I also saw that a large timber clad building appeared to be in active residential use, although it is not for me within this appeal to comment on or determine whether that use is lawful. The important thing in this appeal is the use of the land to which the enforcement notice (the Notice) relates at the time that the Notice was served.

The Notice

2. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only

¹ The reference to the plan is a reference to a plan attached to the enforcement notice.

test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.

3. The Notice alleges the material change of use of a parcel of land (the Land) to a mixed use of agriculture and the stationing of a mobile home for residential use. There is no dispute within the appeal evidence that this has not occurred. However, the requirements of the Notice are to cease the residential use of the Land, which is inconsistent with the allegation of a mixed use, such that the Notice targets something different to what is alleged. The Notice should, therefore, be corrected to require the specified mixed use to cease. It could then revert to its previous lawful use.
4. The Notice relates to the entirety of the Land. As I have noted above, there appears to be a residential use taking place on the Land, not within the mobile home but within a building. It may be that this is a further use that should be detailed within the alleged mixed use, but the evidence all suggests that, even if planning permission existed for it before the service of the Notice, that use was not actually ongoing at that time. I, therefore, have no substantive evidence that the allegation was incorrect at that time.
5. Nevertheless, it is important that any requirement to cease the residential use of the Land does not interfere with any lawful use that there may be for the building. In correcting the Notice, therefore, I shall ensure that the corrected requirement clearly relates to the use of the mobile home for residential purposes only.
6. Given that the reasons for issuing the Notice and both parties' evidence is focussed on the mobile home, I am satisfied that no injustice would arise from this approach.

Ground (f)

7. Ground (f) is that the steps required to be taken by the Notice, 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 the matters stated in the Notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The purpose of the Notice in this case is to remedy the breach of planning control and the appellants suggest that, upon cessation of the residential use, the mobile home could be put to other uses, such as providing accommodation and/or facilities for those working on the conversion of the nearby agricultural building.
8. However, there is nothing in this case to suggest that the mobile home was brought onto the Land identified in the Notice (the Land) for any purpose other than to facilitate the breach of planning control. Moreover, if I were to vary the Notice to simply require the residential use to cease, I may, in effect, be granting planning permission for it to be stationed for some unspecified purpose.
9. The suggestion that the mobile home could be permitted to remain for a temporary period would be something best addressed through the time required to comply with the Notice and would not be a lesser step that would still remedy the breach of planning control. It is, therefore, reasonable and proportionate for the mobile home to be removed as part of remedying the breach of planning control.

10. Therefore, I find that the mobile home is only on the Land for purposes that were part and parcel of the breach of planning control and, in the absence of another clear lawful use for it, its removal is required to remedy that breach. Accordingly, the appeals on ground (f) should fail.

Ground (g)

11. Ground (g) is that the period specified in the Notice to comply with the requirements falls short of what should reasonably be allowed. The appellants suggest that they are unable to find alternative accommodation locally and that there would be disruption to their children's schooling if they were forced to move at short notice.
12. With regard to the Human Rights Act 1998 (HRA) and the United Nations Convention on the Rights of the Child, the best interests of the children are of primary importance. If the mobile home is still occupied by them, compliance with Notice may result in the loss of the appellants' family home which may cause interference with Article 8 of the HRA and disruption to the children.
13. However, there is no detailed evidence to support the appellants' contention that they cannot access privately rented housing, or the location of any other housing options that may be available to them. There is no indication as to what they might ultimately do when any revised time for compliance expires or whether they have actively sought to find alternative accommodation. As such, it has not been shown that other solutions are not available in an appropriate location.
14. The period for compliance with the Notice is 6 months. In the absence of any substantive information about the availability of housing in the locality, I have no reason to find that this would not be adequate time to find suitable alternative accommodation without causing harmful disruption to the appellants' children. It is not disputed that the unauthorised development alleged in the Notice is unacceptable in planning terms and so, in a democratic society, it is in the public interest and in accordance with the law that the breach of planning control is remedied as soon as is reasonably possible.
15. Therefore, I find that the period specified in the Notice would provide a proportionate response to the breach of planning control and does not fall short of what should reasonably be allowed. Accordingly, the appeals on ground (g) should fail.

Formal Decision

16. It is directed that the enforcement notice is corrected by:

- In Section 5 'What you are required to do',

Delete paragraph 1 in its entirety and replace with the text "1. Cease the mixed use of the site for agriculture and the stationing of a mobile home for residential use, by ceasing the stationing of the mobile home for residential use".

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

M Bale INSPECTOR