



Appeal Decision

Site visit made on 19 February 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/W0530/C/22/3312215

Land at Acre, Orwell Road, Barrington, Cambridgeshire CB22 7SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Smita Bhayani against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice, numbered EN/00184/22, was issued on 4 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land to residential use by the stationing of a caravan within curtilage of the land outlined red on the attached plan.
 - The requirements of the notice are to:
 - i) Permanently cease the residential use of the land (shown in red on the attached plan)
 - ii) Permanently remove the stationed caravan (shown in blue on the attached plan) from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) 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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Decision

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.

Preliminary Matters

2. The appellant states that permitted development rights would allow her to build living quarters on the land. I have seen no evidence that there are permitted development rights that would allow the residential use on agricultural land, and I have not therefore dealt with this matter as a 'hidden' appeal on ground (c).

The appeal on ground (d)

3. The ground of appeal is that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control.
4. In legal grounds of appeal such as this, the onus is on the appellant to provide all the relevant information and evidence to support their case. The burden of proof lies with the appellant who must show, on the balance of probabilities, that the development was lawful when the enforcement notice was served.

5. In the reasons for issuing the notice the Council states that it appears to them that the breach of planning control has occurred within the last ten years. The appellant considers that the relevant period is four years.
6. Section 171B of the 1990 Act sets out the time limits for taking enforcement action. Section 171B(2) states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, the time limit for enforcement action is four years. In this case, the allegation relates to the change of use of land to residential with the siting of a caravan, not the change of use of a building. Therefore the time limit of 10 years is the relevant period, as set out in section 171B(3).
7. For there to be success on ground (d), the appellant would therefore need to demonstrate that the residential use of the land commenced on or before 4 November 2012, and had been carried out continuously for a 10 year period. The appellant states that the caravan was brought onto the land in 2015, although Google Earth extracts from 2012 and 2015 do not indicate a caravan on the site. Furthermore, it is not clear whether the caravan was being used for residential purposes throughout the period since then. In any event, it follows that a 10 year period of continuous use cannot be demonstrated. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning application

8. The ground of appeal is that planning permission should be granted for the development alleged in the notice. Having regard to the reasons for issuing the notice, the main issue is whether the site is a suitable location for the development, with regard to its countryside location and accessibility,

Suitable location

9. Policy S/6 of the South Cambridgeshire Local Plan Adopted 2018 (SCLP) sets out the development strategy for the district. Part 3 of the policy sets out that development in the rural area will be limited, with housing focused on Rural Centres and Minor Rural Centres. Windfall development is provided for by rural settlement policies for different categories of village consistent with the level of local service provision and quality of public transport access to Cambridge or a market town. Policy S/7 sets out that outside development frameworks, only development which needs to be located in the countryside will be permitted.
10. The site is said to be 40 acres of farmland, located in the open countryside in excess of 1 mile from the nearest settlements of Barrington and Orwell. There is evidence of a barn on the site and there are two dwellings adjacent to the site, next to the road. The Council has explained that the site is not in or adjacent to any of the locations identified as being suitable for meeting the need for homes and jobs as set out in SCLP Policy S/6 and it is outside any Rural or Minor Rural Centres or the development frameworks of any villages.
11. The site is not readily accessible by public transport as it would be necessary to access bus stops in Orwell or Barrington, which are over 1 mile away with no public footpaths. I saw that traffic speeds are relatively high on Orwell Road, and I note that the national speed limit applies. There are no public footways or street lighting. It is therefore unlikely that local facilities and services would be accessed on foot. While it would be possible to cycle to either of the villages, it

is unlikely to be sufficiently convenient to avoid reliance on the private car on a day-to-day basis in order to access local facilities and services.

12. The appellant states that she works on the land as her main occupation although she has not received an income. The property is in the process of being established as a fruit farm, an application to the Soil Association for organic status has been made, and she is interested in research in soil remediation, plastic waste and construction methods with reference to climate change. While I appreciate that the appellant found commuting to the site by car to be an inefficient way of working the land, this does not indicate that there is a functional need for the appellant to live on the site. There have been thefts and damage to the property, but it has not been argued that there is justification for a residential use on the grounds of security. I have seen no evidence that a residential use is justified in order to support activities that require a countryside location.
13. I am therefore satisfied that the site is not a suitable location for the development, with regard to its countryside location and accessibility. It is therefore in conflict with SCLP Policies S/6 and S/7, insofar as they seek to restrict development in the countryside and protect it from encroachment. The Council has referred to SCLP Policy H/20 which makes provision for Gypsies and Travellers and Travelling Showpeople but I have seen no evidence that the policy is relevant in this case.

Other considerations

14. The appellant states that she has chosen the smallest caravan model available. The caravan has been camouflaged to some extent with timber and green cloth from the adjacent footpath and is screened from the road by vegetation. These are neutral considerations that do not weigh in favour of the development.
15. The appellant has drawn my attention to houses in the area that have received planning permission within the last 7 years. I have not been advised of the particular planning circumstances of these cases, and I cannot therefore conclude that they are comparable. They do not therefore indicate that permission should be granted.
16. The appellant argues that recent development has more than doubled the population of the village of Barrington, but this does not justify residential development on the appeal site, which is some distance from the village.
17. I give some weight to the appellant's wish to support the wildlife value of the site and to further sustainable ways of working but as set out above, there is no evidence that the residential use is justified by any activities being carried out on the land.
18. Third parties have raised a number of issues, including the appellant's right to use the access to the site. This is a private matter between the parties and does not have any bearing on my decision. It is also alleged that the appellant obstructs a public footpath which runs along the southern boundary of the site. There is no indication that this is caused by the stationing of the caravan and is therefore not a matter that is before me. As I am dismissing the appeal I have not considered further the other matters raised by third parties.
19. The appellant states that she has been subject to harassment and that there has been a racial aspect to the harassment. It is likely that the appellant has

the protected characteristic of race under section 149(7) of the Equality Act 2010. I have a duty to consider the three aims of the Public Sector Equality Duty (PSED) as part of my decision. If I dismiss the appeal this is likely to have negative consequences for the appellant, in particular in terms of the aim to advance equality of opportunity.

20. Dismissing the appeal would mean that the caravan would be removed and the residential use would cease. As a result the appellant may become homeless. This would be a consequence of sufficient gravity as to engage the operation of Article 8 of the European Convention on Human Rights. The right to respect for home and private life are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

Conclusion in relation to the appeal on ground (a)

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have found that there is conflict with the development plan in terms of the suitability of the location for the development with regard to its countryside location and accessibility. The harm that I have identified and the resulting conflict with the development plan as a whole is not outweighed by other considerations.
22. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. As such, dismissing the appeal is a proportionate response in these circumstances which would not unacceptably violate the appellant's rights under Article 8.
23. In relation to the PSED, due regard has been paid to minimising the disadvantages suffered by the appellant, insofar as they are different to those without a relevant protected characteristic. Although the appeal on ground (a) is to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.
24. For the reasons set out above, the appeal on ground (a) fails and I shall refuse planning permission for the deemed application.

The appeal on ground (f)

25. The ground of appeal is 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 the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
26. As the notice requires the use to cease and the caravan to be removed from the land, the purpose of the notice is to remedy the breach of planning control. There are no lesser steps that would achieve that purpose. The appellant has not suggested an alternative to ceasing the residential use and removing the caravan from the land. The Council has considered whether the caravan could be left on site but as it has not been argued that it would be put to a use that would be lawful, there is no obvious alternative to remedying the breach of planning control in its entirety. The appeal on ground (f) therefore fails.

Conclusion

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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

N Thomas

INSPECTOR