



Appeal Decisions

Site visit made on 22 February 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Refs: APP/E2001/C/23/3329705 and 3329706 Eight Acre Lake, Mires Lane, North Cave HU15 2QP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr John Mudryk ('the first appellant') of Eight Acre Lake Ltd and by Mr Roger Brookes ('the second appellant', or 'the occupant') against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 9 August 2023.
- The breach of planning control as alleged in the notice is *Without planning [permission the] material change of use of land from commercial recreational use (Outdoor Activities Centre) to mixed use for commercial recreation (Outdoor Activities Centre) and for residential use by way of siting of a (twin unit) caravan, motor home and tent together with associated residential chattels.*
- The requirements of the notice are to (1) cease the residential use of the land; (2) remove from the land the static caravan, tent and motor home currently located within the area highlighted in yellow on the attached plan; and (3) remove from the land all chattels associated with the residential use of the land.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are allowed, the notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issues

1. The sole ground of appeal seeks planning permission for the development alleged in the notice, and hence the main issues arising are all connected with the question whether permission should be granted. The Council contends that it should not, by comprising isolated residential development in the countryside unsupported by policy; by affecting the character and appearance of the surrounding countryside; by providing unacceptable living conditions for its occupant(s); and by being vulnerable to flood risk. These are therefore the main issues in the appeal.

Reasons

Residential development in the countryside

2. The appeal site lies in open countryside not far from the villages of North and South Cave. The site as a whole principally comprises a lake ('Eight Acre Lake') which is the base for a number of commercial and recreational activities such as swimming, fishing and diving, including its use for professionally-run diving training courses. To this end a large amount of relevant clothing and equipment is kept on site, some for sale, with stock values in substantial figures.

3. The use of the site was established in around 2008, following the cessation of gravel extraction. Quarrying activities continue in the vicinity, but with some fields restored to recreational or other uses including the 'Five Acre Lake' next door. The business itself relocated from a site in Rotherham, and is the only one of its kind in the area with the nearest centres offering similar facilities understood to be in Nottingham and Morecambe. A 'functional need' statement is submitted, although dated December 2014. It describes the use of the lake by a diving school, training schools, local groups, disabled groups and by both the police and army. Several buildings, some portable, exist on the site in order to provide changing areas, storage, refreshments, classrooms and the shop.
4. Local Plan policy S4 promotes sustainable development in villages and the countryside. It specifically deals with where the provision of residential dwellings (or caravans, as here) might be justified to support a rural enterprise. Such dwellings may be acceptable subject to demonstrating an essential need. That is explained in the supporting text to mean establishing a clear functional need for the dwelling relating to a full-time worker employed on the enterprise. Security concerns may contribute to establishing a functional need but will not by themselves justify the provision of a dwelling.
5. The occupant of the caravan here has, according to the appeal form, appealed the notice but submitted no separate case or documents in support. From the documents before me he appears to have been separately served with the notice but not separately notified of the appeal. It is understood that he is not actively engaged in the functioning of the enterprise, which as a day-to-day concern is managed by the first appellant who lives elsewhere. The second appellant resides on the site and his presence is claimed to provide security benefits, mainly in the form of an overnight presence, without which the business would become uneconomic to run. His contribution to the business appears to be mainly in the form of a deterrent to unwanted visitors; he is also able to operate the entrance gates from within the caravan so is able to control entry to the site; and is on hand to contact the first appellant in the event of any problems including entry by third parties for the purposes of late-night unauthorised swimming. He is understood to be an elderly gentleman and not said to be a paid employee of the business, although neither is any residential rent said to be payable.
6. The present occupant is understood to have moved onto the site in around 2016, following the Council's second refusal of planning permission for a residential unit on the site (although in a different location). The previous applications sought permission for accommodation for a watchman.
7. The first appellant's 2014 functional need statement set out several instances of theft or break-ins including poaching of fish and thefts of equipment including even a boat. These instances are said to have ceased since the caravan (and its occupant) was brought onto the site thus justifying the overnight presence. It is said that the business would have to close without someone on the site overnight. Paid security guards would be uneconomic and would themselves require an accommodation unit.
8. Thus the first appellant seeks to justify the presence of the caravan and its occupant solely by reference to security concerns, which is not supported by the local policy. The threat is however otherwise of the loss of the business, which is undoubtedly a valuable local asset providing swimming and diving

facilities that cannot readily be obtained elsewhere within a reasonable distance. If this threat of loss is realistic then the functional need here could be established, notwithstanding that it arises only out of security concerns.

9. The first appellant contends that cameras and alarms have existed on the site for many years with negligible effects save to make the site insurable, although no claims have ever been made because of the impact on premiums. The site is presently part-fenced and there appears some scope to improve the security arrangements without an overnight presence being required. Whilst the first appellant states that some additional security arrangements, such as paid guards, would be uneconomic, it is also said that some organisations such as the police are able to use the diving facilities for training without charge. No profit and loss accounts or the like have been supplied but this does raise the question whether the site could be run on a more profitable basis that could in turn fund some better site security (or insurance premiums).
10. Whilst conscious that the first appellant is unrepresented and has made his own case, I do not have enough information before me to be satisfied either that the security arrangements at the site could not be improved on an economic basis, or that the threat of closure of the enterprise in the absence of the caravan is a realistic one. To allow a residential presence on the site only on the basis of security issues is discouraged by the relevant local policy and on the evidence before me I cannot be satisfied that such a functional need exists.
11. The Council's notice cites a number of sustainable development policies that are generally directed towards encouraging residential and other development to sustainable locations that will reduce the need to rely on the private car and the re-use of suitable previously developed land. The caravan here is on an already-developed site and so gains some support in that respect, but it is in a remote location far from necessary services and facilities and, although the occupant is beyond normal working age which may reduce the number of trips, the development's location does not attract any support from those development plan policies.

Effect on the character and appearance of the countryside

12. The Council's objection arises partly owing to the proximity of the caravan to the adjacent public rights of way network, from which it can clearly be seen. Whilst this is the case, the caravan appears as part of a group of buildings and shipping containers placed on the site, and its presence adds only negligibly to the impact of those structures. It appears commensurate with the commercial use of the site and causes no harm to the countryside. I detect no conflict with the relevant development plan policies, specifically policy ENV1, in this regard.

Living conditions of the occupier of the caravan

13. Policy ENV1 is concerned with integrating high quality design, and the Council's concern here is that the integration of the caravan into the commercial site, with no defined residential amenity area of its own, has the potential to adversely affect the living conditions of its occupier. There appears plenty of space on the site, however, and this would be a matter potentially capable of being overcome by the imposition of planning conditions requiring a particular site layout.

Effects arising from flood risks

14. The Council refers to the caravan being sited in Flood Zone 3A where 'highly vulnerable' uses including the occupation of caravans as permanent residences are not usually permitted. This would potentially be different from holiday caravans (which I understand to apply to the site next door) which have a different vulnerability classification for flood risk purposes.
15. What is not clear to me is whether the entire site lies within this flood zone and so whether the caravan, if it does lie within Flood Zone 3, is potentially capable of relocation within the site, although I accept that to do so could potentially negate some of the security benefits arising from its present position as well as potentially introducing noise concerns from the A63. The site is of its nature comprised of very different land levels, with a large lake in the centre of it but with steep embankments and raised ground to the site edges. No detailed flood risk map has been supplied that would show whether or not all the site lies in Flood Zone 3. The particular sources of flood risk have not been identified.
16. No flood risk assessment has been submitted with these appeals, and how the actual land levels of the site are reflected in the risk maps is not clear. The Environment Agency do not appear to have been consulted on the deemed applications, and no comments have been received from any other consultees. The first appellant avers that the site has never flooded to his knowledge, and that the relevant land lies above that of the adjacent A63 carriageway, which itself lies above land all the way to the River Humber. The residential use is characterised not only by the presence of the caravan, which would be difficult to transport, but also by a motor home. It appears that with arrangements to subscribe to flood warnings then evacuation could be secured in flooding events. However the development cannot be said to comply with the development plan in this respect given the apparent flood risk categorisation and the absence of any site-specific flood risk assessment.

Other matters

17. The occupant of the caravan, being the second appellant, has made no case of his own, but the first appellant reports that he is an elderly gentleman with nowhere else to go, who has resided on the site since 2016 having previously provided 'similar security' at a site elsewhere for the first appellant since 2004. I am bound in such cases to give consideration to the Human Rights implications and any equality impacts of my decision. This is not an easy task here where so little is known about the occupant, including whether or not he has any aversion to bricks and mortar accommodation which might affect his housing options. Neither party has addressed whether the caravan itself remains readily capable of transportation, or what sites might lawfully exist to which it could be relocated and whether these would be suitable.
18. It appears the case that the caravan and the second appellant did not move onto the site until after permission had already twice been refused. I am not informed about the second appellant's involvement, if any, in that planning process but there is no charge by the Council that the development here has been 'intentionally unauthorised'. Nor is it said why it has taken them so long to enforce against it.
19. There is no suggestion within the corners of the notice that the implications for the occupant's home life were considered, and nor are they mentioned in the

Council's statement. That statement refers to an officer report having authorised the enforcement action, but it was not supplied and so whether the Council have considered the personal circumstances of the occupier, and why four months is considered an adequate time to comply with the notice, is not known.

Planning Balance and Conclusion

20. In conclusion I am not quite persuaded by the information given that a case has been made out to justify the retention of the caravan on the grounds of functional need. Not enough information has been given about the finances of the business or about whether alternative security arrangements have been considered or attempted. On the basis of the information before me, I cannot be satisfied that the threat of closure of the business is a realistic one, although I have no reason to doubt the genuineness of the first appellant's concern in this regard. The development therefore attracts no support from policy S4 of the Local Plan which supports particular forms of countryside development which do not include dwellings for which no essential need is established.
21. The impact of the caravan on the character and appearance of the countryside is negligible when placed in the context of all the other buildings and structures on the site. Insofar as the caravan lacks a domestic amenity area for its occupant, this is capable of being secured by a planning condition. Therefore I discern no overall conflict with policy ENV1. In the absence of a functional need for the caravan in this countryside location, there is conflict with the sustainable development policies of the Local Plan that seek to direct development towards settlements, although this conflict is tempered somewhat by the re-use of previously-developed land and by the apparent absence of any need to make work-related trips by the particular occupier.
22. The caravan appears highly vulnerable to flood risk, and the development is one which should not normally be permitted. It should be demonstrated that the development could not be located in an area of lower flood risk, and that it provides wider sustainability benefits and would be safe for its lifetime without increasing flood risk elsewhere. These matters have not been demonstrated and thus, given the reported flood risk categorisation, the development clearly conflicts with policy ENV6.
23. Overall, therefore, the development is contrary to the development plan for the area.
24. Turning to whether any countervailing considerations might outweigh that conflict with the development plan, the personal circumstances of the second appellant (the occupier) are largely unknown. He has made no case of his own but it is not clear to me whether he is fully aware of the appeal process or whether he is even literate, the Council having provided no details of any investigations as to his circumstances. The Council has not disputed the first appellant's assertion that the occupier is of advancing years and has nowhere else to go, and has produced no analysis of its own about the likely impacts of the enforcement action on his home or private life. The availability of suitable alternative accommodation, and whether this could be in bricks and mortar, has not been discussed. Having now lived on the site for nearly a decade, the second appellant's home life is likely to be very well established by now and it is likely to be highly disruptive to a person of such advancing years to have to leave.

25. The 1990 Act provides that planning permission may be granted for a specified temporary period only. Circumstances where this may be appropriate include where a trial run is needed in order to assess the effect of the development. There is no presumption that such a temporary permission will then be granted permanently, but a permanent permission can be refused where a clear justification exists.
26. Here there is a lack of information as to the site occupier's personal circumstances and of any granular detail as to the flood risks on the site. The first appellant's cogent assertions as to the land levels in the vicinity mean I am not certain that the entire site lies at a high risk of flooding, because I have not been supplied with the mapping information that would distinguish the particular topography of the site or its access routes. Therefore this is an appropriate case in which to grant a temporary personal permission of a short duration in order to enable the proper assessment of those matters to be undertaken. I conclude that the likely effects to the occupier, given his age and length of residence on the site, of the dislocation from the site would outweigh the conflicts with the development plan whilst those matters can undergo a proper assessment.
27. For these reasons I conclude that the appeals should succeed on ground (a) and a temporary permission, personal to the present occupier, will be granted.

Conditions

28. The Council have suggested a number of planning conditions in the event that permission is granted. Given that I shall be granting a time-limited permission to a particular named occupier, those matters will need to be reflected in the conditions attached to the permission.
29. The Council suggest a condition requiring the caravan to remain in its present location and not to be altered or replaced without the Council's written approval. As the permission I am granting is limited to a 12 month period I consider such changes to be unlikely, although a flood risk assessment may result in a better location, but the condition I shall impose requiring the caravan's removal after 12 months shall apply to any replacement (or altered) caravan.
30. Conditions are suggested by the Council to tie the occupancy of the caravan to the commercial outdoor activity centre at the site. Ultimately I have not been satisfied as to the 'essential need' case for the caravan, but have found its temporary retention to be justified only by the personal circumstances of its occupier. Therefore I do not find these conditions to be necessary to the grant of permission. Rather than saying the motor home and tent shall not be used independently of the caravan, I shall restrict the residential occupation of the site only to the particular occupier in whose favour the temporary permission is being granted, which achieves the same result.
31. There is no objection raised to the proposed condition requiring a bird nesting box and I shall impose it. The proposed condition requiring the submission of a flood warning and evacuation plan is necessary given the apparent flood risk pertaining to the site and I shall impose that too, with the inclusion of a requirement to adhere to it. A requirement to provide a domestic amenity area for the occupant, as discussed above, is unnecessary for the short duration of the permission that I shall grant.

Formal Decisions

32. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of land at Eight Acre Lake, Mires Lane, North Cave for a mixed use of commercial recreation (Outdoor Activities Centre) and for residential use by way of siting of a twin unit caravan, motor home and tent together with associated residential chattels, subject to the following conditions:

- (i) The mixed use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. The residential use hereby permitted shall be discontinued, all caravans, motor homes, tents and residential chattels shall be removed, and the land shall be restored to its former condition on or before the expiry of 12 months from the date of this decision.
- (ii) The residential use hereby permitted shall be carried on only by Mr Roger Brookes. Any caravan on the site, of which there shall not be more than one, shall not be occupied by any person other than Mr Brookes. No part of the site shall be occupied for residential purposes other than by Mr Brookes.
- (iii) When the residential occupation of the site by Mr Brookes ceases, the residential use of the site hereby permitted shall also cease and all caravans, motor homes, tents and residential chattels shall be removed from the site.
- (iv) Within three months of the date of this decision one bird nesting box such as Schwegler Nest Box 1B, 2H robin boxes or sparrow terrace 1SP (or similar product from an alternative supplier) shall be erected on the site in accordance with the manufacturer's installation recommendations and shall be retained thereafter.
- (v) Within three months of the date of this decision a Flood Warning and Evacuation Plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter adhered to at all times. This Plan shall include the following information:
 - occupant awareness of the likely frequency and duration of flood events;
 - safe access to and from the development;
 - subscription details to Environment Agency flood warning system, 'Flood Warning Direct'.

Laura Renaudon

INSPECTOR