



Appeal Decisions

Inquiry Held on 27 and 28 February 2024

Site visit made on 28 February 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2024

Appeal Refs: Appeal A: APP/A0665/C/23/3319954

Appeal B: APP/A0665/C/23/3319955

Land Off Overton Heath Lane, Malpas

- 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 Denis Picton (Appeal A) and Mr Steven Picton (Appeal B) against an enforcement notice issued by Cheshire West & Chester Borough Council.
- The enforcement notice was issued on 2 March 2023.
- The breach of planning control as alleged in the notice is "Without planning permission, the change of lane from agricultural to residential, the siting of three caravans for residential occupation in connection to the residential use of the land ("the unauthorised development")."
- The requirements of the notice are: Complete the following: 5.1 Cease the residential use of the land, as outlined in blue on the attached enforcement plan; 5.2 Remove the three caravans from the land as outlined in red on the attached enforcement plan.
- The period for compliance with the requirements is 6 months.
- The appeals are made on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out in the Formal Decision.

Preliminary Matters

The Enforcement Notice

1. The appeals concern the alleged residential use of three caravans. I shall refer to the green caravan as "Caravan 1"; a larger cream coloured caravan with horizontal brown stripes as "Caravan 2" and a smaller cream coloured touring caravan as "Caravan 3".
2. The alleged breach of planning control refers to "change of lane". The Council conceded within its statement and proof of evidence that this was a typographical error which should refer to "change of land". The appellant (Mr Denis Picton) raised the concern at the Inquiry that reference to "lane" was misleading and had caused him to focus originally on works carried out to the lane.
3. However, the notice and plan make it sufficiently clear that the matter concerns caravans on the land and when considering the Council's early concession regarding the typographical error, I am satisfied that what was at

issue was clear and that the appellants have had the opportunity to argue their case fully.

4. On the basis I accept that the notice refers to land, the parties raised no objection to the suggested correction to the allegation to read "...The material change of use of the land...". I am satisfied that the notice can be corrected accordingly without resulting in injustice.
5. The alleged breach of planning control relates to the material change of use of the land, which paragraph 2 of the notice identifies as the area "edged in red on the attached plan". Whilst from the evidence it would appear that this area extends beyond a single title deed, this in itself is inconsequential in terms of the effect of the notice.
6. I am satisfied the notice indicates, and the parties understand, that the alleged breach is facilitated by the caravans within the area outlined in blue. I am also satisfied, because of the wording of paragraph 5.2 of the notice, that it can be no surprise to the appellants that the Council seeks the residential use of the land, facilitated by the caravans, to cease. The wording of both the allegation and requirement 5.1 may therefore be corrected accordingly to clarify these points without resulting in injustice.
7. At the Inquiry the Council confirmed, following a recent site inspection, that it accepted Caravan 2 was not fit for habitation and ought to be removed from the alleged breach of planning control. I have no reason to take a contrary view and accept that the enforcement notice may be amended accordingly without resulting in injustice.
8. It was also confirmed that Caravan 3 has now been removed from the appeal site. In this regard the appellants said they were content to withdraw their ground (b) appeal altogether, on the proviso that the requirements of the notice explicitly recognised that it was the residential use of the touring caravan that was required to cease within the area demarcated in red on the plan. This reflected the comfort sought in that the touring caravan may still be brought onto the land from time to time in association with the care of horses, whilst recognising that the Council are seeking to end the residential use of the land. The Council were agreeable to this amendment and again I see no compelling reason to take a contrary view. Whilst I do not consider this specific amendment to be strictly necessary in light of the other amendments to the notice as discussed above, neither would it result in injustice to the parties.
9. Consequently I treat the ground (b) appeal as having been withdrawn and take no further action in relation to it. Furthermore, because the appellants accept that their ground (f) case was entirely 'parasitic' on the ground (b) case, now withdrawn, I also take no further action in relation to this element of the appeal.

The Appeal Process

10. The appellants raised the concern that they have struggled to understand what has been required of them during the appeal process, and have not been assisted such that their case has suffered as a result. Irrespective of the quality of written evidence submitted, I note that the appellants have generally met and understood the various deadlines for submitting information and have

had the opportunity to argue in full their case during the Inquiry event. It is not the responsibility of the Council or Planning Inspectorate to assist the appellants in developing and advocating their case. However, I do understand they have not been professionally advised, and acknowledge and sympathise this may have resulted in the feeling of being somewhat overwhelmed by the process. Nevertheless, I am satisfied that the appellants have been treated fairly and have not suffered injustice as a result of the appeal process.

11. At the Inquiry the appellants set out various serious concerns they had about the implications of their appeals being unsuccessful. These included the prospect of becoming homeless and loss of rental income from the land; a need for reliance on state welfare benefits, when there is no such reliance at present; the consequent impact on physical and mental health; the consequent potential cessation of the productive, economic use of the land for the keeping and care of horses; and the need to consider alternative ways to care for the horses. It was also cited in the appellants' closing submissions that enforcement action, in this case, was not in the public interest. However, these are all matters that concern the planning merits of the case. In the absence of an appeal on ground (a), that planning permission should be granted, they are not matters that I am able to have regard to in my decision.

Interested Parties

12. Prior to the Inquiry it was brought to my attention that there may be interested parties who were not previously aware of this appeal who may wish to comment. I explained to the main parties at the Inquiry, that I would allow until 15 March 2024 for the receipt of any comments from interested parties. The main parties confirmed at the Inquiry that they were content to deal with this specific matter through an exchange of written correspondence. Accordingly, the representations subsequently received from interested parties were shared with the main parties who were given the opportunity to make written comments in response.
13. I have had regard to the various representations made by interested parties and to the appellants' comments in response. The representations essentially raised concerns about the residential use of the site. However as set out above I am not dealing with the planning merits of the case and whether planning permission ought to be granted. The representations also drew attention to the appellant's previous responses to a Planning Contravention Notice in 2014. I have had regard to this later in my decision as a matter of course.

Other Matters

14. The appellants' case includes ground (d), which is a so-called legal ground of appeal. With each of the legal grounds, the burden of proof rests with the appellants, with the standard of proof being the balance of probability.
15. Evidence to the Inquiry was given on Oath.

Reasons

The appeals on ground (d)

16. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. The ground of appeal is made with specific regard to Caravan 1 only.

S171B(3) of the Town and Country Planning Act 1990 (the Act) provides that no enforcement action may be taken after the end of the period of ten years, beginning with the date of the breach. Therefore, subject to the qualification described below, in order to succeed on this ground, it would be necessary for the appellants to demonstrate that the use of the caravan for residential purposes had continued, in breach of planning control, for a period of not less than ten years before the notice was issued, that is from at least 2 March 2013.

17. The Council's position is that even if continuous residential use can be shown over the requisite period, the appellant (Mr Denis Picton) has taken steps to deliberately conceal the existence of the permanent / full time residential use of the caravan. If deliberate concealment is proven to have occurred, then in accordance with case law, this would mean the appellants are not entitled to rely on the aforementioned immunity period¹.
18. It is undisputed that Caravan 1 was brought to the site in late 2012. In terms of the nature of use of the caravan, responding on 30 March 2014 to a Planning Contravention Notice (PCN) issued by the Council, the appellant stated that Caravan 1 was in use as "part time" accommodation to oversee engineering works associated with the grant of a previous planning permission². It was further confirmed, in response to the PCN, that this did not provide the appellant's full time residential accommodation and that the appellant had an alternative full time address in Warrington at which he was also residing.
19. Article 3, Schedule 2, Part 5, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the use of land as a caravan site under certain circumstances. These include use as a caravan site of land on or adjoining land on which building or engineering operations are carried out, if that use is to accommodate a person employed in connection with such operations. This is subject to the proviso that the use of the land as such is discontinued and the caravans are removed from the site when the circumstances cease to exist.
20. The Council had given considerable weight to the PCN response, in the knowledge that the falsification of information therein would put the recipient of the notice at potential risk of a serious fine. Accordingly, its position was that if accepting the caravan did not provide permanent / full time residential accommodation, a breach of planning control would only occur immediately after the PCN response date in March 2014 at the earliest.
21. However, the breach would begin later than this, in 2017, following expiration of the planning permission for the steel portal frame building, if it was accepted, in accordance with the GPDO, that Caravan 1 was providing accommodation purely to help oversee that development³. This is because, as set out above, the temporary residential use of the caravan in connection with the construction work would be lawful. The Council would not be able to enforce against the residential use during this time, which accordingly could not be counted as part of the immunity period. Either way, the Council says that if the PCN response was accepted as truthful, it was not possible for the

¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

² This was for the construction of a steel portal frame building - Ref 12/02755/AGR - granted 6 July 2012.

³ There is no dispute that that planning permission has lapsed without work on the aforementioned steel portal frame building having commenced.

- appellants to demonstrate 10 years of continuous unauthorised residential use, as was required.
22. It seems to me that the Council would have been entitled to assume that the appellant would resort to living at the alternative Warrington address, identified by him within the PCN response, once Caravan 1 was no longer required to support the building project. However, at the Inquiry, the appellant conceded that the aforementioned responses to the PCN, regarding the part time residential use of the caravan and that he also resided at a 'full time' residence in Warrington, had been false. He confirmed that occupation of Caravan 1 had in fact been on a full-time basis since late 2012. On its face the appellant's actions amount to positive deception in matters integral to the planning process, that would have concealed any continuous unauthorised residential use of Caravan 1, at least in the period prior to the PCN response.
23. The appellant's evidence to the Inquiry was that he was coerced by a former member of the Council's enforcement team into responding as he had done to the PCN, in order to continue living on the site. Had this been the case it would still not overcome the fact that positive deception had occurred. However, for the following reasons, and the record, I am not persuaded that such coercion happened.
24. It is entirely clear how such deception could have benefitted the appellant in terms of evading enforcement action at the time and continuing to live on the site. Similarly, it is not at all clear how being complicit in such deception would be in the interests of the Council officer.
25. Furthermore, in evidence before me⁴ the Council officer in question wrote to the appellant on 7 May 2013. He says in the letter "*The Local Planning Authority are of the view that providing the caravan is used as temporary accommodation as stated then this would not be a breach of planning control.*" Reference to "as stated" indicates that the appellant confirmed to him use as temporary accommodation. Then on the 20 May 2013 the appellant responded by email saying that "*The green caravan is being used to live on site to oversee engineering works and to keep the site safe and secure.... This caravan will leave site at of [sic] end of works.... I understand the above would be subject to planning permission if required after the engineering works are completed in which case a planning application would be submitted*".
26. This exchange of correspondence indicating the Council officer seeking to establish the accommodation was not for permanent / full-time occupation would be at odds with the notion the appellant was forced to conceal such manner of occupation by way of the PCN response a number of months later. The suggestion of coercion could not be adequately explained by the appellant at the Inquiry.
27. I conclude, on the balance of probability, that deliberate concealment of the breach of planning control has occurred. The appellants are not entitled to rely on the provisions of s171B(3) of the Act, such that any unauthorised continuous full-time residential use of the caravan at least up to 30 March 2014 must be discounted. Accordingly, the ground (d) appeals fail.

⁴ See appendices 13 and 14 to the Council's statement of case.

The appeals on ground (g)

28. The appeal is that more time should be allowed to comply with the requirements of the notice. The appellants raise the concern that the requirements of the notice will result in them being made homeless and dependent on welfare benefit support; also that these circumstances will be made more complicated and difficult to deal with due to their poor physical and mental health. A period of 9 months is therefore requested.
29. I acknowledge that evidence has been provided from medical professionals corroborating such accounts of poor health. I do have sympathy for the appellants' circumstances and consider that a longer compliance period as requested would be proportionate and justified in this case. The ground (g) appeals therefore succeed to this extent.

Conclusion

30. For the reasons given above, I conclude that the ground (d) appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decisions

31. It is directed that the enforcement notice is corrected as follows:

In section 3, the deletion of the following paragraph describing the matters which appear to constitute the breach of planning control:

" Without planning permission, the change of lane from agricultural to residential, the siting of three caravans for residential occupation in connection to the residential use of the land ("the unauthorised development")."

And its substitution with the following paragraph instead:

" Without planning permission, the material change of use of the land from agricultural to residential, as facilitated by the siting of two caravans for residential occupation (Caravan 1 and Caravan 3) within the area outlined in blue on the attached plan ("the unauthorised development")."; and

In section 5, where it states 'What you are required to do', delete the following two paragraphs in their entirety:

"5.1 Cease the residential use of the land, as outlined in blue on the attached enforcement plan

5.2 Remove the three caravans from the land as outlined in red on the attached enforcement plan."

And substitute the following three paragraphs instead:

"5.1 Cease the residential use of the land, as facilitated by the siting of two caravans for residential occupation within the area outlined in blue on the attached plan.

5.2 Remove the green caravan (Caravan 1) from the land as outlined in red on the attached enforcement plan.

5.3 Cease the use of the land outlined in red on the attached enforcement plan for the residential use of the touring caravan (Caravan 3)."; and

Delete the words "5. Time for Compliance" and substitute the words "6. Time for Compliance" instead.

32. It is directed that the enforcement notice is varied as follows:

In, corrected, section 6 of the notice the deletion of the words:

"Within 6 calendar months comply with point 5.1 to 5.2 from the date this notice takes effect" and their substitution with the words "Within 9 calendar months" instead, as the period for compliance with the requirements of the notice.

33. Subject to the corrections and variation, the appeals are dismissed and the enforcement notice is upheld.

R Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Amy Boxshall
(Acting as advocate and witness)

She called:

Denis Picton	Appellant
David Picton	Appellant's son
Steven Picton	Appellant's son
Andrew Whitehand	Interested Party

FOR THE LOCAL PLANNING AUTHORITY:

Shemuel Sheikh
(Barrister)

He called:

Brian Leonard	Principal Planning Officer
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Documents submitted at the Inquiry:

1. Application Form and Location Plan relating to Planning application ref: 12/02755/AGR
2. The Council's opening submissions.
3. Land registry title plan.
4. The Council's closing submissions.