



Appeal Decision

Site visit made on 3 June 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2024

Appeal Ref: APP/L1765/C/22/3311957

Land at Four Acre Stables, Clewers Hill, Waltham Chase, Southampton, Hampshire SO32 2LN

- 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 S. Manning against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 25 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission:
(i) The making of a material change of use of the land from an equestrian use of the land for residential purposes through the stationing of a mobile home; (ii) The erection on the land of, outbuildings, kennel, shepherds hut, solar panels, play equipment, trampoline, vehicles, storage containers to facilitate the unauthorised use in (i). (iii) The laying of hard surfacing to facilitate the stationing of a mobile home and the development in (i) and (ii) above.
 - The requirements of the notice are: i) Cease the use of the Land for residential purposes. ii) Remove from the land the mobile home, outbuildings, kennel, shepherds hut, solar panels, play equipment, trampoline, vehicles, storage containers and all other paraphernalia brought onto the land to facilitate the residential use. iii) Dig up and permanently remove the hardstanding facilitating the unauthorised development in (i) and (ii) from the land. iv) Remove from the land all materials, rubble, rubbish and debris arising from steps (i) to (iii). v) Reseed the land to grass.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant contends the mobile home enforced against is actually a building. This amounts to a hidden ground (b) appeal as to whether the breach alleged in the notice has occurred as a matter of fact. Injustice to the parties however does not arise from considering this ground of appeal.
3. It has been brought to my attention that in the reasons for issuing the notice reference is made to Policy DM11 of the Winchester District Local Plan Review, when it should be the Winchester District Local Plan Part 2, 2017 (the LP Part 2). I have therefore determined the appeal on this basis and as the appellant has had the opportunity to comment on this policy, injustice to the parties does not arise.

4. There has been a revised National Planning Policy Framework (the Framework) published by Government. It however does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

The ground (b) appeal

5. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the stationing of a mobile home for residential purposes, has not occurred as a matter of fact.
6. The appellant contends that the mobile home is actually a building.
7. The evidence is that a mobile home was brought to the site on 7 November 2015. It was towed on its wheels by a Land Rover. Three days later the A-frame and wheels were removed.
8. In bringing the mobile home to the site in November 2015, it clearly met the definition of a caravan for the purposes of the relevant Acts¹. That the mobile home then had the A-frame and wheels removed is not unusual. Neither is it unusual that a septic tank was installed and that the mobile home was chained to concrete blocks. As a matter of fact and degree there is accordingly very little evidence to demonstrate on the balance of probabilities that the mobile home is of sufficient size, permanence or physical attachment to the ground² to render it a building.
9. There is evidence that the mobile home could not be removed from the site by crane as there is insufficient room along the access track. However, even if the A-frame and wheels could then not be replaced, but for which there is very little evidence to demonstrate, there is also very little evidence to demonstrate how this would render the mobile home as not a caravan. Whether or not the mobile home can be physically transported by a desired means, such as crane, is not a relevant test. The extracts from the appeal decision³ brought to my attention also does not assist the appellant as they merely highlight some general principles of mobility.
10. It is further asserted that no additional hardstanding has been laid for the purpose of the mobile home, however there is very little evidence to which I can attach significant weight to demonstrate on the balance of probabilities such an assertion. In any event, the notice only requires hardstanding which facilitates the unauthorised use to be removed.
11. The appeal on ground (b) therefore fails.

The ground (d) appeal

12. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.

¹ Caravan Sites and Control of Development Act 1960; Caravan Sites Act 1968

² As per: *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

³ APP/G2245/X/16/3160695

13. A continuous period of 10 years residential use would therefore need to be demonstrated prior to the issue of the enforcement notice on 25 October 2022.
14. The evidence before me is that the appellant moved to the site in May 2017 and residentially occupied an existing mobile home. That mobile home had been brought to the site in November 2015 by a previous owner as a replacement for a rotten and leaking version, for use as a rest room. It was not connected to any services and was not residentially occupied.
15. There has since been conflicting evidence to suggest that the mobile home was actually residentially occupied from November 2015. However, even if that was the case, the appellant is still unable to demonstrate on the balance of probabilities a continuous period of 10 years residential use.
16. The Council has taken enforcement action against an unauthorised use and with-it operational development that facilitates the use, as it is entitled to do. There is then very limited evidence to demonstrate on the balance of probabilities that the other developments referred to in section 3 of the notice, such as solar panels, storage containers or the shepherds hut, amongst other things, are not part and parcel of the unauthorised use, even if they pre-date the appellant's ownership of the site given there is now evidence pertaining to a prior residential use of the mobile home. That some of these may have been present for more than 4-years is therefore not relevant for the purposes of my assessment, as enforcement action has been taken pursuant to s171B(3) of the Act and therefore 10-years is the appropriate time period for these facilitative developments. Development that is not facilitative, such as the stables, are not targeted by the notice.
17. The appeal on ground (d) therefore fails.

The ground (a) appeal

Main Issue

18. The main issue is whether or not the site is in a suitable location for a residential mobile home having regard to local and national planning policy.

Reasons

19. The site consists of an area of land which is principally divided into paddocks used for grazing. The site itself is accessed via a long gravel track which also serves a number of equestrian related sites.
20. The development relates to the use of the land for the stationing of a residential mobile home as well as the various other developments which facilitate this use.
21. For the purposes of the Winchester District Local Plan Part 1, 2013 (the LP Part 1), and the LP Part 2, the site is located in the countryside. The Council's overall strategy for housing delivery generally follows a hierarchical approach with most development directed towards larger settlements, alongside new allocations and some small-scale housing in small rural communities. The Council's approach to residential development is therefore broadly consistent with the housing approach and objectives set out in the Framework.
22. Policy MTRA4 of the LP Part 1 concerns development in the countryside. This is a restrictive policy which lists only four types of development that will be

- permitted, namely where there is an operational need for a countryside location, such as for agriculture, the reuse of existing rural buildings, expansion or redevelopment of existing buildings to facilitate the expansion of established businesses, and, small-scale sites for low key tourist accommodation. Policy MTRA3 of the LP Part 1 then simply identifies settlements where development should be located to meet local needs.
23. Policy DM11 of the LP Part 2 is concerned with housing for essential rural workers where there is a clearly established functional need for a full-time worker, amongst other things.
24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
25. I appreciate the site is not an isolated one and has no special designations. Nevertheless, it is a rural one, accessed down a long gravel track and by means of a narrow road which is unlit and without footways. I also have very little evidence pertaining to proximate services and facilities without reliance placed on the private car. The need to travel is therefore not minimised. I am therefore not persuaded on the evidence before me, including that of my site visit, that the site is in a sustainable location. It is therefore not a location where a new residential use would normally be considered acceptable.
26. The case of the appellant is however that there is an operational need for a countryside location because there is a horse kept at the site which constitutes a recreational use, and which is ridden by his granddaughters.
27. It is however plain that the keeping of a horse on recreational or welfare grounds neither provides justification for a residential presence at the site, nor evidence of a functional or other operational need for a rural worker to reside in the mobile home. Moreover, there is little substantive evidence that the appellant needs to live at the site either for personal reasons or in connection with his business.
28. The appellant contends there is the absence of an explicit reference to his circumstances. However, this cannot be regarded as a policy failure. Rather, there are restrictive policies in order to protect the countryside from unjustified development arising from wider circumstances.
29. I also do not accept that there have been abnormal circumstances at the site owing to the presence of the mobile home since November 2015, nor an exceptional circumstance arising in the terms expressed by the Framework in order to retain the residential mobile home.
30. The Framework also states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, a single unit of residential accommodation, and the base for the appellant's business that this also provides, brings only very limited benefits to the economy and the social well-being of the local community.
31. I conclude the site is not in a suitable location for a residential mobile home having regard to local and national planning policy. The residential use

therefore contravenes Policies MTRA3 and MTRA4 of the LP Part 1 and DM11 of the LP Part 2 as well as the housing objectives of the Framework.

Other Matters

32. Whilst the Council's memo to legal services asserts harm to the character and appearance of the area, the enforcement notice does not expressly identify any such harm or carry the additional policies referred to in that memo. The Council's appeal statement then offers little clarification. In light of my findings in respect of the main issue, and that injustice to the appellant would otherwise arise in considering the character and appearance of the area, I will not consider this matter further.
33. It has been confirmed that the appellant has made a payment in respect of the Solent Recreation Mitigation Strategy to address biodiversity concerns in the Special Protection Area. I am however not persuaded that the concerns raised in respect of nitrates have been adequately addressed pursuant to Policies CP15 and CP16 of the LP Part 1. Even if I am wrong, in light of my findings in respect of the main issue, I do not need to consider this matter further.
34. I appreciate that dismissing the appeal would result in interference with the private rights of the appellant, however there is a legitimate aim that is in the public interest, namely in respect of the main issue, and which is then necessary and proportionate in light of my findings.

Conclusion

35. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal should fail.

The ground (f) appeal

36. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
37. However, the appellant does not propose lesser steps, rather, the points made relate to planning merits, and which I have considered in the ground (a) appeal.
38. The appeal on ground (f) therefore fails.

The ground (g) appeal

39. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short as alternative residential accommodation would need to be secured as well as for his business and animals.
40. Whilst I appreciate the notice would require the appellant, amongst other things, to secure alternative residential accommodation and a base for his business, I have very limited evidence as to why a period of 2 years would realistically be required. Whilst I have sympathy for the appellant, a period of 9

months strikes the appropriate balance so as not to unduly perpetuate the breach of planning control.

41. The appeal on ground (g) therefore fails.

Overall Conclusion

42. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

Formal Decision

43. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR