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## Appeal Decisions

Site visit made on 16 July 2024

**by James Blackwell LLB (Hons) PGDip, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 July 2024**

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**Appeal A Ref: APP/E9505/C/22/3310960**

**Appeal B Ref: APP/E9505/C/22/3310961**

**Appeal C Ref: APP/E9505/C/22/3310962**

**Loddon Marina, 12 Bridge Street, Loddon, Norfolk, NR14 6EZ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Raymond Hollocks of Carlton St Peter Properties Ltd (Appeal A), Mr William Hollocks (Appeal B) and Mr Mark Willingham (Appeal C) against an enforcement notice issued by Broads Authority.
- The notice was issued on 20 October 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the material change of use of the Land from land with a use ancillary to the Marina, to land for a mixed use ancillary to the Marina and the stationing and residential occupation of static caravans in the positions marked X and Y for purposes not ancillary to the Marina"
- The requirements of the notice are:
  1. To permanently cease the use of the Land for the standing and use of the static caravans marked with a X and Y for residential purposes.
  2. To remove the caravans and any structures, fixtures or otherwise upon which they sit from the Land.
  3. To permanently disconnect all the services which have been provided to the static caravans (water and electricity) and remove the pipework and cables which have been laid to provide these services, from the Land and make good the excavated trenches to the same level as the surface of the adjacent land.
- The period for compliance with the requirements is six months from the date the Enforcement Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

**Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decisions.**

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### Preliminary Matters

1. The Enforcement Notice (EN) alleges a material change of use (MCU) of the appeal site from ancillary land to a neighbouring marina, to a mixed use comprising ancillary land to the marina and the stationing of two caravans for residential use. Whilst the appellants appear to accept this MCU has taken place, they contend that the use is either not a breach of planning or else has become immune from enforcement.
2. The two caravans are labelled "X" and "Y" on the plan accompanying the EN, and I have referred to each caravan accordingly.

## **GROUND C**

3. Pursuant to this ground of appeal, the appellants say there has not been a breach of planning control. To succeed on this ground, the evidential burden rests with the appellants to demonstrate their case, on the balance of probability. Planning merits are not relevant.
4. In their response to a Planning Contravention Notice (PCN) in August 2022, the appellants confirmed that both caravans within the site were occupied for residential use. The response said caravan X had been occupied since 1 August 2021 for such use and that caravan Y had been occupied since March 2022. The appellants also confirmed that Council Tax was being paid in respect of each caravan.
5. In turn, it seems clear that the caravans were occupied for residential use at the time the EN was issued. Given the appeal site was previously ancillary land to the marina, the introduction of a residential use within the appeal site would have resulted in a material change of use of the appeal site, to a mixed use comprising ancillary land to the marina and the stationing of caravans for residential use.
6. There are no permitted development rights which would authorise this material change of use, which means it would have needed planning permission to be lawful. Given that planning permission was not obtained, the MCU constituted a breach of planning control. This remains the case, irrespective of whether the Council intimated to the appellants that enforcement action would not be taken.
7. The appeals on ground (c) therefore fail.

## **GROUND D**

8. Pursuant to ground (d), the appellants say the development was immune from enforcement on the date of the EN, and therefore lawful. Specifically, they say that caravan X had been on site for more than 15 years at this date and that caravan Y had been on site for more than 5 years.
9. As per s171B(3) of the 1990 Act, no enforcement action can be taken in respect of the alleged breach of planning control after ten years beginning with the date of the breach. This means the appellants would need to demonstrate the alleged mixed-use had been ongoing continuously and uninterrupted since 20 October 2012 (or earlier), and for a period of at least ten years. Once again, planning merits are not relevant to this ground of appeal, and the burden of proof falls on the appellants, on the balance of probability.
10. I should highlight that the appellants say the relevant immunity period is four years, and not ten, as the development concerns a residential unit. However, the four-year immunity rule relates to a change of use of a building to use as a single dwelling house. A caravan is not typically a building, which means the four-year rule would not apply.
11. The appellants say that caravan Y has been in situ for approximately 5 years. This position is supported by aerial photographs of the site, which show the caravan within the site in 2017, but not in 2014. This means the stationing of this caravan within the appeal site for residential use has not been ongoing for

ten years or more, and was not immune from enforcement at the date of the EN.

12. In terms of caravan X, the Council accepts that it had been sited within the appeal site for at least ten years prior to the date of the EN. This position is supported by aerial photos of the appeal site taken in 2010, which show the caravan in situ.
13. However, to succeed on this ground, the appellants must demonstrate the caravan had been used continuously for residential purposes for at least ten years prior to the date of the EN.
14. The appellants' response to the PCN said the caravan had been occupied for residential use since 1 August 2021, which corresponds with the Council's own records of when Council Tax was first paid. Whilst the appellants suggest the caravan was also occupied before this date, they have presented very little evidence to support this position. Without additional supporting evidence, I cannot determine the extent of any occupation prior to August 2021. In turn, I cannot conclude that caravan X had been occupied for residential use continuously and uninterrupted for a period of at least ten years prior to the date of the EN.
15. On the evidence before me, the appellants have therefore not demonstrated, on the balance of probability, that the alleged mixed use, comprising land ancillary to the marina and the stationing of two static caravans for residential use, was immune from enforcement on the date of the EN.
16. The appeals on ground (d) therefore fail.

## **GROUND F**

17. Pursuant to ground (f), the appellants contend that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. In particular, the appellants say that any objections to the development could be negotiated, or else planning permission could be obtained.
18. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control. The requirements set out in the EN must therefore achieve this purpose.
19. The requirements require the cessation of the unauthorised use. They also require the caravans and associated structures and fixtures to be removed, and associated services to be disconnected. These requirements will ensure that the unauthorised residential use does cease, and are proportionate steps which go no further than remedying the breach of planning control. Any lesser steps would not properly achieve this purpose, noting that if the caravans were to remain, it is likely that residential use would continue in some capacity.
20. There is suggestion that one of the caravans has previously been occupied by a site manager to aid security of the marina. However, in their final comments, the appellants also say "*there has never been a employed manager living on site since 1999 as it is not viable*". On the evidence me, retention of the caravans would therefore not be justified on the basis of any business or security need of the marina.

21. Notwithstanding the above, whilst the steps of the notice require the residential use to cease, they do not require the mixed-use, as alleged in the notice, to cease. Given that a mixed-use constitutes a separate use in its own right, the steps should require this mixed-use to cease. I have therefore varied the first requirement, to ensure the cessation of use corresponds accurately to the mixed-use, as alleged.
22. Given the requirements already require the caravans to be removed, the existing residential use of the site will be precluded in any event. The variation would also not prevent the appellants from reverting back to the established marina use of the site. I am therefore satisfied that the variation does not prejudice either party.
23. Given there is no ground (a) appeal before me, any argument that planning permission could be granted for the development is immaterial to the outcome of these appeals.
24. For these reasons, and subject to this variation, the appeals on ground (f) otherwise fail.

### **Other Matters**

25. I have corrected the allegation to refer to the stationing of static caravans for residential use, rather than residential occupation. This is to ensure the allegation accurately describes the unauthorised use of the land. I have made consequential variations to the requirements, to ensure they are consistent with the modified allegation. I have also made a number of other minor modifications to the wording of both the allegation and the requirements, to ensure sufficient clarity. None of these changes affect the overarching interpretation of the allegation nor of the requirements, so I am satisfied they would not prejudice either party.
26. The Council is responsible for planning control within its district area, and any suggestion that the Council does not have the authority to take enforcement action is baseless.

### **Human Rights Considerations**

27. Failure to succeed on grounds (c), (d) and (f) will in all likelihood, require the current occupiers of the caravans to vacate their homes. This represents an interference with their property (Article 1) and their home and family life (Article 8), which are afforded protection under the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.
28. Nonetheless, there is little evidence before me to suggest the current occupiers would be unable to secure alternative residential accommodation elsewhere. The EN allows 6 months to comply with the requirements to cease residential use of the appeal site, which is a reasonable period to achieve this.
29. Compliance with the EN will ensure that the spatial strategy of the district is protected, whilst also ensuring development achieves good design quality and adequate living conditions for occupiers. It has not been shown that these legitimate aims can be achieved by means which would interfere any less with the appellants' rights. In turn, the requirements of the EN are proportionate and necessary in the circumstances, and do not result in a violation of the appellants' rights under Articles 1 and 8.

## **Conclusion**

30. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations.

## **Formal Decision**

31. It is directed that the enforcement notice is corrected by substituting paragraph 3 with the following new paragraph 3:

### THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the material change of use of the land from land with a use ancillary to the marina to a mixed-use comprising land with an ancillary use to the marina and the stationing of two static caravans for residential use in the positions marked X and Y on the attached plan.

32. It is directed that the enforcement notice is varied by substituting paragraph 5 with the following new paragraph 5:

### WHAT YOU ARE REQUIRED TO DO

- 5.1 Permanently cease the mixed-use of the land comprising land with an ancillary use to the marina and the stationing of two static caravans for residential use in the positions marked X and Y on the attached plan.
  - 5.2 Remove the caravans, together with all associated structures, fixtures, fittings and domestic paraphernalia from the Land.
  - 5.3 Permanently disconnect all services which have been provided to the static caravans (including water and electricity) and remove all associated pipework and cables which have been laid to provide these services, and reinstate the excavated trenches which facilitated these services to the same level as the surrounding land.
33. Subject to these corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

*James Blackwell*

INSPECTOR