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# Appeal Decision

Site visit made on 2 July 2024

**by L Douglas BSc (Hons) MSc MRTPI**

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

**Decision date: 01<sup>st</sup> August 2024**

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**Appeal Ref: APP/U2235/C/23/3323467**

**Land at Newstead Farm, Couchman Green Lane, Staplehurst, Tonbridge TN12 0RT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Matthew Greengrow against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 3 May 2023.
- The breach of planning control as alleged in the notice is: Breach of planning condition. The planning permission concerned: Planning Permission MA/12/1469 dated 06 February 2014 for Temporary change of use of land for the stationing of a temporary dwelling (mobile) for farm owner/manager and permanent use of existing agricultural building for the accommodation of livestock. The condition concerned: Condition 3 of MA/12/1469. The mobile home hereby permitted shall be removed and the land upon which it is sited restored to its former condition on or before 3 years from the date of this permission; Reason: To enable the Local Planning Authority to review the special circumstances under which this permission is granted. The Breach of Condition Concerned: It appears to the Council that the condition is now in breach because the mobile home remains on site and the land has not been restored to its former condition.
- The requirements of the notice are: a) Cease the use of the land for the stationing of a mobile home for residential purposes within the red line of the attached plan. b) Remove from the land the static mobile home and all associated paraphernalia including hard standing, plainings / shingle and any subterranean features such as oil tanks, sewage treatment tanks and utilities from the Land as shown within the red outlined plan attached, and to return the land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading, allowing the regeneration of the natural grass sward. c) Remove all resultant materials, rubbish, paraphernalia and debris from complying with step (a) and (b) above from the Land.
- The period for compliance with the requirements is 3 months from when the notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(b) and (c) of the Act.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.**

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## Preliminary Matters

1. It is incumbent on me to get the notice in order. The notice alleges a breach of condition 3 of planning permission reference MA/12/1469 ('the PP'), but the steps required to be taken exceed what is necessary to remedy the alleged breach by complying with the condition. Furthermore, the plan attached to the

notice encompasses a different, larger area of land compared to that edged in red on the site location plan<sup>1</sup> identifying the land subject to the PP.

2. I shall therefore use my powers under section 176 of the Act to correct and vary the notice by replacing the plan originally attached to the notice with a copy of the approved site location plan, and by changing the steps required to be taken to ensure they require no more than compliance with condition 3 of the PP. I shall also correct a minor typographical error at paragraph 2 of the notice, which refers to 'plans' rather than 'plan'. These corrections and variation will not cause injustice to any parties, as they provide clarity and ensure the alleged breach will be remedied in a less onerous manner.
3. Part of the appellant's case refers to the mobile home not requiring a caravan site licence under the provisions of the Caravan Sites and Control of Development Act 1960 (CSCDA60). Those arguments would be more appropriately dealt with as part of an appeal under ground (c), but no appeal has been formally made under ground (c). In these circumstances, where the Council has had the opportunity to respond to the appellant's claims, I shall consider them as though an appeal had been made under ground (c) in addition to the appeal under ground (b).

### **Ground (b)**

4. To succeed under this ground of appeal the appellant needs to demonstrate, on the balance of probabilities, that the alleged breach has not occurred. There is no dispute that there is a mobile home on land at Newstead Farm.
5. The PP authorised development which included the temporary change of use of land for the purposes of stationing a mobile home, subject to 6 conditions. Condition 3 and the full description of the development authorised by the PP are set out in the banner heading above.
6. Condition 6 of the PP states that the development shall be carried out in accordance with a list of approved plans, which includes those showing a floor plan and elevations of a mobile home and a site location plan, with the area of land subject to the PP edged in red. There are no conditions requiring the mobile home to be in a precise location/orientation within the red line on the site location plan, or for it to comprise any precise dimensions or design.
7. The PP therefore authorises the temporary use of the land edged in red on the site location plan for the stationing of a mobile home anywhere within that red line. The PP does not restrict the precise location, orientation, dimensions, or design of the mobile home, notwithstanding reference to approved plans in the description of development approved and at condition 6.
8. The mobile home was stationed in its existing position within 3 years of the PP being issued<sup>2</sup>. The PP was implemented when the mobile home was stationed on the land, and the mobile home is now in breach of condition 3 of the PP.
9. The mobile home on the land is substantially different to that shown in the elevation and floor plans referred to by condition 6 of the PP, meaning that condition 6 of the PP has been in breach since the PP was implemented. This

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<sup>1</sup> Drawing number 5071.1-A annotated 'AMENDED' and dated 30 July 2013, listed as an approved plan at condition 6 of the PP

<sup>2</sup> As shown in photographs at Appendices 6, 7, and 11 of the Council's Statement of Case

does not mean that the mobile home was placed on the land without the benefit of the PP.

10. It is unclear whether the mobile home is fully or partially within/outside the red line on the site location plan approved as part of the PP. Following my site visit, the parties were invited to comment on this matter, but neither provided a convincing response. The onus is firmly on the appellant under this ground of appeal to demonstrate that the alleged breach of planning control has not taken place, on the balance of probabilities. For the above reasons, the appellant has failed to do that.
11. The appeal under ground (b) must therefore fail.

### **Ground (c)**

12. To succeed under this ground of appeal the appellant needs to demonstrate, on the balance of probabilities, that the alleged breach does not constitute a breach of planning control.
13. Section 57 of the Act sets out that planning permission is required for the carrying out of development of land. Section 55 of the Act provides the relevant definition of development, which includes the making of any material change in the use of land. In addition, section 171A of the Act states that failing to comply with a condition to which planning permission has been granted constitutes a breach of planning control.
14. The land is said to have a previous use for agricultural purposes and is now used for the siting of a mobile home for residential purposes. A material change of use of the land which required planning permission has therefore taken place, and I note the appellant's claims that he does not rely on the PP to site the mobile home on the land.
15. Planning permission is granted for the use of land as a caravan site under the provisions of Article 3(1) and Class A of Part 5, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This applies in the circumstances set out at paragraphs 7 and 9 of the First Schedule of the CSCDA60. There is no dispute that the mobile home is a caravan.
16. Paragraph 7 relates to land which is used as a caravan site for accommodation of persons employed in farming operations on the land during a particular season. Although I have been referred to a mixed farming business undertaken by the appellant and his partner which has 'a number of seasonal employment demands', there is a lack of detail as to what farming operations they may be employed in. Furthermore, it has not been shown how their occupation of the caravan may be confined to a particular season.
17. Paragraph 9 relates to land used as a caravan site for the accommodation of persons employed in connection with building or engineering operations on that land or adjoining it. It is claimed site investigation works are being undertaken by the appellant and his partner, which include 'the taking of soil samples, monitoring of run-off and other research which can only be performed on site'. These are to compile a risk assessment and investigation report required by a pre-commencement condition attached to a grant of prior approval<sup>3</sup> relating to

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<sup>3</sup> Ref: 23/500392/PNQCLA

land at Newstead Farm. They are claimed to be in addition to unspecified enabling works to secure the site. However, due to a significant lack of detail, it is not clear whether any of these works comprise building or engineering operations, as referred to by paragraph 9.

18. Limited details have been provided to support claims that the circumstances in paragraphs 7 and/or 9 apply to the mobile home, which has been on the land for a significant period. Indeed, it had been on the land before prior approval was granted for the change of use of other land at Newstead Farm<sup>4</sup>.
19. I am therefore unconvinced that the mobile home benefits from any planning permission granted under the provisions of the GPDO and the CSCDA60. For the reasons given above, the evidence does not demonstrate, on the balance of probabilities, that the mobile home is not in breach of planning control.
20. The appeal under ground (c) must therefore fail.

### **Conclusion**

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

### **Formal Decision**

22. It is directed that the enforcement notice is corrected and varied by:

- The deletion of the plan originally attached to the enforcement notice and its substitution for the plan attached at Appendix 1 to this Decision;
- The deletion of the text 'plans' at paragraph 2 of the enforcement notice and its substitution for the text 'plan'; and
- The deletion of the text 'The Council consider the following steps are necessary to remedy the breach of planning control. a) Cease the use of the land for the stationing of a mobile home for residential purposes within the red line of the attached plan. b) Remove from the land the static mobile home and all associated paraphernalia including hard standing, plainings / shingle and any subterranean features such as oil tanks, sewage treatment tanks and utilities from the Land as shown within the red outlined plan attached, and to return land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading, allowing the regeneration of the natural grass sward. c) Remove all resultant materials, rubbish, paraphernalia and debris from complying with step (a) and (b) above, from the Land' at paragraph 5 of the enforcement notice and its substitution for the text 'Remove the mobile home from the land and restore the land to its former condition'.

23. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

*L Douglas*

INSPECTOR

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<sup>4</sup> Including ref: 20/501595/PNQCLA

**Appendix 1 to Appeal Decision Ref: APP/U2235/C/23/3323467**

Corrected enforcement notice plan (not to scale)

