



Appeal Decision

Site visit made on 29 May 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 13th August 2024

Appeal Ref: APP/C1760/C/22/3307775

Home Spring, Houghton Road, North Houghton, Stockbridge, Hampshire, SO20 6LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Nadine Charlton against an enforcement notice issued by Test Valley Borough Council.
 - The notice was issued on 26 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission (a) the making of a material change in the use of the land to residential, and
 - (b) the carrying out of building operations including:- (i) The construction of a dwellinghouse, annotated with the letter 'A', as shown on the attached plan; (ii) The formation of hard surfacing, comprising of aggregate material and concrete pads, which form the supporting base for the dwellinghouse.
 - The requirements of the notice are : 1. Permanently cease the use of the land for residential purposes; 2. Disconnect and permanently remove the electric and water connections from the dwellinghouse; 3. Permanently remove the dwellinghouse from the land; 4. Permanently remove the hard surfacing, comprising of aggregate material and the concrete pads which formed the supporting base for the dwellinghouse, from the land; and 5. Permanently remove from the land all resultant materials and waste associated with the completion of requirements 2 to 4 above.
 - The periods for compliance with the requirements are: 9 months for requirement 1 and 10 months for requirements 2 to 5.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 9 months for requirement 1 and 10 months for requirements 2 to 5 as the periods for compliance and their substitution with 12 months as the period for compliance.
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for partial costs was made by the Council against the appellant. This is the subject of a separate decision.

Ground (b)

4. An appeal on ground (b) is that the matters alleged to comprise a breach of planning control have not occurred. The notice alleges both a material change

- of use and operational development. The appeal on ground (b) concerns the operational development enforced against, primarily the erection of a dwellinghouse. It is claimed that the residential structure on the land is a mobile home or caravan and not a building. Case law has established that a mobile home or caravan would not generally satisfy the well-established definition of a building, with regard to permanence and attachment.
5. Section 29 of the Caravan Sites and Control of Development Act 1960 (CSCDA) defines "caravan" as "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted" (but excludes railway rolling stock or any tent).
 6. The residential structure in this case is described by the appellant as a twin-unit caravan. Under s13(1) of the Caravan Sites Act 1968 (CSA), a twin unit caravan is "a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices" (the construction test); "and (b) when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)" (the mobility test).
 7. Section 13(1) CSA goes on to say that a twin-unit caravan which meets this definition "shall not be treated as not being [...] a caravan within the meaning of Part 1 CSCDA" (which includes s29 CSCDA referred to above) "by reason only that it cannot lawfully be so moved on a highway when assembled". A twin-unit caravan can therefore meet the definition of a caravan, notwithstanding that it is too large to be lawfully moved on a highway.
 8. Section 13(2) CSA also prescribes strict size limitations which must be met for a structure to be classed as a twin-unit caravan under s13(1). These requirements, which are absolute, say that the width of the structure cannot, when assembled, exceed a width of 6.8 metres.
 9. There is no dispute that the structure satisfies the twin-unit caravan dimensional requirements. It is also common ground that it was designed or adapted for human habitation. It is a proprietary modular portable building made up of 3 sections constructed off-site and designed to be bolted together. It was brought to the site in sections which were then placed on a prepared base and bolted together on the site. An email letter from the firm who constructed the unit says that their modular buildings can be moved as a complete unit, but that it had to be broken down to fit through the access to the site. It goes on to say that the final assembly took the form of two parts being joined on site, and provides photographs taken by the team during transportation and installation. The photographs show 1 section, the front module, being brought onto the site and being craned into place to be attached to 2 sections already in place and assembled. What is lacking however is cogent evidence that assembly on site was of only 2 parts. The JCPSA email does not say explicitly that that was the case, and if it had been then that could easily have been shown by photographs.
 10. But in any case, however it is framed, the structure is clearly composed of 3 separately constructed sections, not 2, and it is the **3** sections that are **designed** to be assembled on site. It is not the case, as the appellant asserts,

that the final act of construction comprising the connection of the final section to the two already joined sections is decisive. As such it does not comply with CSA section 13(1)(a) and so is not a twin unit caravan as defined.

11. So far as the mobility test is concerned, that also relies on the assertion in the JCPSA email that it is physically capable of being lifted and moved as one unit by suitable plant or equipment form. It claims that attached photographs show larger volume mobile units being transported and lifted in their final form, but none of the photographs show a unit of similar construction and dimensions being lifted and transported. Nor is there any other evidence to show that the assembled structure can be lifted and moved by road. The appellant quotes the transport company who delivered the modules, but they clearly state that while the unit would be possible to move around the location using a crane, using a supporting framework beneath to prevent movement, removal from the site would require the separation of the two units, which suggests that it would not, when assembled, be physically capable of being moved by road from one place to another.
12. The burden of proof in an appeal on this ground is firmly on the appellant, and the clear divergence from CSA section 13(1)(a) along with ambiguities in the evidence provided to support the contention that the construction and mobility tests are met falls well short of discharging that burden.
13. Under this ground it is also claimed that the formation of hard surfacing, comprising of aggregate material and concrete pads, has not occurred. However, photographs submitted by both the Council and the appellant clearly show the aggregate and the concrete pads upon which the structure sits. I am satisfied that this has occurred, as a matter of fact.
14. For completeness, and in view of how the evidence was presented, I have also considered whether, notwithstanding my conclusion that the structure is not a twin-unit mobile home, it is nonetheless a chattel rather than a building. Case law¹ has established three factors to be considered, size, permanence and degree of fixation or physical attachment. The structure is clearly large enough to be a building. Turning to permanence, the structure is a prefabricated modular building of a type often used as a temporary expedient, but this does not necessarily mean that it is impermanent. Indeed, the use of the structure as a full-time dwelling, its placing on a prepared base which itself amounts to operational development, and the absence of persuasive evidence of its mobility as a single unit, or indeed of its mobility once dismantled without the use of specialist equipment, suggest that its presence on the land is something other than fleeting or ephemeral. As to physical attachment, the structure has not been moved since it was placed on the land, to do so would probably require the use of heavy lifting equipment of some sort, and while it may not be physically fixed to the concrete pad foundations, its very weight is clearly sufficient to secure it in place. as a matter of fact and degree, it is reasonable to regard the structure in question as a building.

Ground (c)

15. The basis of an appeal on ground (c) is that the matters alleged to have occurred do not comprise a breach of planning control. What is disputed here is

¹ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

“the making of a material change in use of the land to residential”. The appellant argues that the land has a lawful residential use, hence there has been no change of use. It is also argued that the hardstanding benefits from planning permission.

16. This argument is advanced firstly on the basis that the location of the building is land that was within the curtilage of the appellant’s previous property, Walled Garden Cottage². Curtilage is not a use of land in any case, but while the land and Walled Garden Cottage may have been in the same ownership previously that does not lead to a conclusion, without more, that the land had a lawful residential use. It is also claimed that planning permission³ granted in January 2019 for the “construction of a domestic and agricultural storage building and the re-routing of an existing driveway” means that the land has a lawful residential use. That permission was claimed to have been begun by the access works and the laying of the base on which the appeal building now stands. However, the permission can only be begun by the carrying out of a material operation comprised in the development permitted. The material operations apparently relied upon are those which provide the access and base for the appeal building. It has not been adequately explained how they might be comprised in the development granted permission in 2019. Condition 1 of the 2019 permission required the development to be begun within 3 years. There is not evidence to show that a material operation comprised in the development permitted in 2019 was carried out within the requisite period, and in fact an entirely different development has been carried out, and that is one to which the works relied upon are integral. In these circumstances I can only conclude, on the balance of probability, that the 2019 permission development never began, it was not implemented and is no longer extant.
17. It follows that I do not accept the appellant’s assertion that the hardstanding was laid in association with the development permitted in January 2019 and is hence lawful. The argument that the concrete pads are not development is also unsustainable, they are part and parcel of the hardstanding, which is development requiring planning permission.
18. As with ground (b), the burden of proof is on the appellant to show, in this case, that the land has a lawful residential use, and also that the hardstanding benefits from the 2019 planning permission. The evidence falls well short of discharging that burden.

Ground (d)

19. This ground is that it is too late to take enforcement action. However, no case is made that the development, or any part of it, has gained immunity from enforcement by the passage of time.

Ground (a) and the deemed planning application

20. Under this ground the deemed planning application is described by the appellant as a retrospective planning application for the stationing of a caravan as a rural worker dwelling to be occupied in relation to the ongoing agricultural/horticultural business operating upon the wider site. However, the deemed planning application must fall within the terms of the matters stated in the enforcement notice as constituting a breach of planning control, whether in

² Also referred to as Wallgarden Cottage or Wall Garden Cottage.

³ Council Ref. 18/02670/FULLS

relation to the whole or any part of those matters. The description above is clearly predicated on the assertion that the structure enforced against is a mobile home. In view of my finding that the structure is a building, what is sought is to retain the structure on site for use as the appellants primary residence. It is argued that the provision of a dwellinghouse can be justified on the basis of an essential need to be present on the site for the purposes of the horticultural enterprise being carried out on the wider site.

21. Policy COM2 of the Test Valley Borough Revised Local Plan (2016) provides that development outside the boundaries of settlements will only be permitted if it is appropriate in the countryside, as set out in specified local plan policies. So far as new housing development is concerned, the most relevant policy in this case is Policy COM10 which, consistent with national planning policy, recognises that there will be circumstances where it is essential for rural workers to be located in the countryside where they work. It provides that proposals for occupational accommodation for rural workers at or near where they work will be permitted provided that, among other things, there is an essential functional need for the dwelling, the relevant business is viable, and there is no other suitable and available existing accommodation within the area. Where the proposal is linked to a new business, it should be for temporary accommodation for a period of three years.
22. The wider site, now called Home Springs Gardens, is the base for the appellant's horticultural business which, I understand, focuses on consultancy work for a range of clients which includes the provision of plants and expertise for show or display gardens and garden design projects. Some of the consultancy work is overseas. The site is said to be used to demonstrate and experiment plant growing techniques along with cultivating plants for clients and shows, though at present the actual use appears relatively limited. On my site visit I could see that plants for exhibition gardens or displays were present both outside and within the horticultural barn, but at relatively low levels and without any sign of specialist temperature and ventilation control or misting equipment within the barn, a significant part of which appeared to be set up for purposes other than plant propagation or storage. Although reference has been made to a need to be on site to manage watering, heat and ventilation control for tender high value plants, I saw nothing on the site to support an assertion of plants or systems that might fail without constant attention or monitoring.
23. The business is not new, having been incorporated in November 2020, but while it might be the case that complex plant propagation systems may be installed in the future, that is far from clear from the evidence before me. The business plan for 2024 and beyond refers to establishment of on-site facilities to enable the expansion of the available plant range, to include tender plants requiring overwintering, but there are no details of those facilities, and what might be accommodated within the barn could only be relatively small in scale. What is on-site at present, and what there is evidence of having been on-site in the past, would certainly not require the level of attention that might justify the provision of a rural worker's dwelling.
24. Further, the principal worker for whom the on-site accommodation is required is the appellant, but quite a lot of her business commitments, including consultancies and partnerships, appear to be off-site based, and alternative arrangements for the claimed level of on-site presence required are vague. The presence of high value plants on the site has also been claimed to justify an

on-site residential presence for security purposes, and it is claimed that insurance for the site can only be secured on that basis. However, in view of the very limited evidence of stock values that is not a matter to which I can attribute significant weight.

25. Overall, I consider that there is not sufficient evidence of an essential need for an on-site residential presence, whether the business is considered as new or as established. Nor have I been provided with evidence there is no other suitable and available existing accommodation within the area. So far as viability is concerned, while some accounts have been submitted which indicate reasonable turnover and income, it is far from clear how much this is derived directly from on-site activities. Certainly, the financial evidence falls well short of demonstrating that the horticultural business on the site itself is capable of supporting a full-time rural worker. In short, I am not satisfied that the requirements of Policy COM10 are met and the policy does not therefore provide support for either a temporary or permanent dwelling in the countryside.
26. The effect of the erection of the rudimentary dwelling relatively close to listed buildings must also be considered having regard to my duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving their settings. It is well screened from Drayton Lodge by topography, vegetation and an intervening domestic building, such that it does not affect the setting of the listed building. However, its close proximity to Walled Garden Cottage, to which the land was formerly attached, along with the nature of the topography and vegetation between them, means that it sits firmly within the rural surroundings of the heritage asset which I consider to be important to how its significance would be experienced. The previous building approved in roughly the same area was considered to be acceptable in this respect, as was the horticultural barn, but these were not new dwellings and would have, or had been, subject to approval of materials to ensure that they remained subservient to, and complementary in appearance to, the listed building. Albeit softened to an extent by a green roof, the appeal building, however, has a distinctly modern appearance that contrasts unsympathetically with the heritage asset. Along with its use as a dwellinghouse, with associated activity and paraphernalia, the presence of the appeal building detracts from the simple rustic character of the land surrounding Walled Garden Cottage and forming the setting within which its historic significance can be appreciated. As such the development conflicts with Policy E9 of the Local Plan which expects new development to make a positive contribution to sustaining or enhancing the significance of the heritage asset taking account of its character, appearance or setting.
27. The harm in this respect amounts to less than substantial harms in national planning policy terms, and so must be balanced against any public benefits. However, no public benefits have been identified, so the harm weighs significantly against the development. The uncharacteristic and discordant appearance of the building in this rural setting also causes conflict with Local Plan Policy E1 which requires development to be of a high quality in terms of local distinctiveness and design, and with Policies HTN1 and HTN4 which, respectively expect development to conserve and wherever possible enhance the built, historic and natural environments, and to be in keeping with the character of properties in the locality.

28. For the reasons given above, the development is clearly contrary to the development plan, read as a whole. Planning applications must be determined in accordance with the development plan unless other considerations indicate otherwise. In this case, refusing planning permission means that the appellant would lose her home, which amounts to interference with her Human Rights. However, the harm which is caused by the development cannot be ignored. I consider that the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8 of the First Protocol of the European Convention on Human Rights. The best interests of the appellant's child is also a primary consideration. While I do not consider it likely the family will be unable to find alternative accommodation, stability in terms of housing, family life and education would clearly be in her best interests, and this is a matter to which I attribute substantial weight. There are also personal circumstances behind the development to which I accord further significant weight. However, the weight of these considerations is not sufficient to overcome the development plan and national policy conflicts so as to justify a grant of planning permission.

Other matters

29. The location of the dwelling also means that there is the potential to affect the integrity of the New Forest Special Protection Area which is vulnerable to harm due to recreation pressure, and to the Solent and Southampton Water SPA through water pollution. The Council has schemes available to avoid this potential harms from new dwellings, which involves contributions to alternative recreation spaces and ensuring that developments can either demonstrate nutrient neutrality or provide contributions towards a scheme of off-setting. The appellant has submitted a draft agreement to be made under section 106 of the 1990 Act which would secure the New Forest SPA contributions and, if necessary, contributions to ensure nutrient neutrality, although the need for this is disputed. Since I am refusing planning permission in any case, the nutrient neutrality matter is not one that I need to resolve, but I am satisfied that avoiding effects on the SPAs could have been secured had I been minded to grant permission.

Conclusion

30. While there is evidence that the appellant has been able to develop a sustainable business that is intimately associated with the horticultural use of the wider site, in the circumstances that does not amount to justification for a new dwelling in the countryside to support a rural worker in the absence of cogent evidence of a necessity to have a worker living on-site, or of evidence of the ability of the horticultural business on the site itself to support a full time worker. Further, the dwelling itself harms the setting of a listed building and does not integrate well with its surroundings. The development therefore fails to accord with the development plan, and there are not sufficient reasons to depart from the development plan. Planning permission must therefore be refused, and the appeal on ground (a) dismissed.

Ground (f)

31. The steps required by the enforcement notice clearly seek to remedy the breach of planning control by discontinuing the use of the land and by restoring the land to its condition before the breach took place. An appeal on this ground

is that the steps specified exceed what is necessary to achieve those purposes. It is argued that there is ambiguity or unreasonableness in the requirements, but, having regard to my conclusions on ground (b) and (c), I am satisfied that the requirements are clear and unambiguous. Whether, for example, the concrete pads or blocks upon which the building has been placed are development has no relevance to this ground. No lesser steps have been proposed which might achieve the purposes of the notice, hence this ground must fail.

Ground (g)

32. This ground is that the period allowed for compliance with the notice is too short. Since it involves the loss of the appellant and her daughter's home, and they will have to find alternative accommodation, I am satisfied that it would be reasonable to allow a period of 12 months overall. The appeal on this ground succeeds to that extent.

Paul Dignan

INSPECTOR