

Appeal Decision

Site visit made on 28 August 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2024

Appeal Ref: APP/Y2620/C/23/3329899

Land at Hurricane Corner, Lower Bodham, Holt NR25 6RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Gay against an enforcement notice issued by North Norfolk District Council.
- The notice was issued on 23 August 2023.
- The breach of planning control as alleged in the notice is without planning permission:
 - (i) Material change of use of the land from use for agriculture to a mixed use for agriculture and for the stationing of a static caravan for residential purposes
 - (ii) Material change of use of the land from use for agriculture to a mixed use for the open storage and stationing of motor vehicles, vans and the body part of a Luton van
 - (iii) Operational development consisting of the construction and/or siting of a building unit.
- The requirements of the notice are:
 - (i) Permanently cease the residential use of the static caravan labelled 'A' on Plan B
 - (ii) Permanently remove the static caravan labelled 'A' on 'Plan B' from the Land
 - (iii) Permanently remove the body of the luton van labelled 'B' on 'Plan B' from the Land
 - (iv) Permanently cease using the land for the open storage and stationing of motor vehicles and motor parts not used for agricultural purposes and remove all Daihatsu vans, Volkswagon Golfs, the Peugeot vehicle and any other motor vehicle not used for agricultural purposes from the Land
 - (v) Permanently remove the unit labelled 'C' on 'Plan B' from the Land and any associated building material arising from compliance with this requirement.
 - (vi) Permanently remove all scrap metal, oil drums, vehicle parts and tyres from the Land
 - (vii) Permanently remove all residential paraphernalia from the Land, including the fridge, cooker and filing cabinet from the Land.
- The periods for compliance with the requirements are:
 - (i) 2 months from the date the notice takes effect
 - (ii) 3 months from the date the notice takes effect
 - (iii) 2 months from the date the notice takes effect
 - (iv) 3 months from the date the notice takes effect
 - (v) 3 months from the date the notice takes effect
 - (vi) 3 months from the date the notice takes effect
 - (vii) 2 months from the date the notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 (as amended).

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

Preliminary Matters

1. Since the enforcement notice was issued, the Council has granted planning permission¹ for the building labelled Unit C on Plan B to be retained for ancillary agricultural purposes. S180(1)(a) of the 1990 Act² provides that where planning permission is subsequently granted for any development carried out before the grant of that permission, the enforcement notice shall cease to have effect so far as it is inconsistent with that permission. Step (5) (v) of the Notice therefore ceases to have effect and there would be no need to remove Unit C.
2. During my site visit I saw that two further static caravans were stationed on the Land. These static caravans are not dealt with by the enforcement notice (Notice) and are not matters before me for consideration.
3. An appeal on ground (d) is that it was too late for enforcement action to be taken when the Notice was served. The appellant's case on this ground relates only to the hardcore base located below Unit C. The construction of the hardcore base constitutes operational development. However, the hardcore base has not been described in the allegation and the steps required to be taken do not include its removal. As such, I concur with the Council's view that the Notice does not apply to the hardcore base. There is therefore no ground (d) appeal for me to deal with.

Appeal on Ground (b)

4. The allegation set out in section (3) of the Notice identifies, in addition to the operational development, two separate mixed uses. Only one area of Land is however identified on the plans attached to the Notice. I saw the Land is enclosed by high fencing and there is only one means of access. While smaller parcels of land have been fenced off within the Land, these are primarily to contain livestock and they have a temporary appearance.
5. The appellant owns the Land and is carrying on a variety of uses upon it. While those uses may not be ancillary or incidental to one another, I find the entire unit of occupation to be the planning unit. As such there can only be one mixed use alleged to be taking place on the Land. I shall proceed on the basis there is one alleged mixed use comprising of agriculture, stationing of a static caravan for residential purposes, and open storage and stationing of motor vehicles, vans and the body part of a luton van.
6. An appeal on ground (b) is that the corrected matters alleged have not occurred. It is for the appellant to show, on the balance of probability, that a material change of use to a mixed use comprising of agriculture, stationing of a static caravan for residential purposes, and the open storage and stationing of motor vehicles, vans and the body part of a luton van, along with construction and/or siting of a building unit has not occurred.
7. There is no dispute that the land is in use for agriculture, and the open storage and stationing of motor vehicles and vans. The appellant however contends that the static caravan provides welfare facilities when supervising livestock housed on the Land and that it has not been used for residential

¹ PF/24/0441 – retrospective planning permission for existing Unit C granted 26 April 2024

² Town and Country Planning Act 1990 as amended

purposes. He further contends that the body part of the luton van is used to house poultry, which is an agricultural activity.

The static caravan

8. No evidence has been provided to support the appellant's claim the static caravan has not been used for residential purposes. The Council does not clarify who they consider is residing in the static caravan. The appeal form provides an alternative address for the appellant to that of the Land, suggesting that he lives elsewhere. The address provided on the appeal form is the same address as the one provided in the planning contravention notice (PCN) response. The appellant's responses in the PCN states that the static caravan was being used for agriculture and had only been used for that purpose since being stationed on the Land. I therefore find it more likely than not that the appellant is not residing in the static caravan.
9. The site visit photographs, taken by the Council on 23 June 2023 and provided in Appendix 3 of their Statement³, show a static caravan to be present on the Land. A static caravan by its very nature provides accommodation capable of human habitation. Whether that accommodation is being used for residential purposes or some other use is however a matter of fact and degree.
10. The internal photographs taken on 23 June 2023 show:
 - The living area to contain a television and sofa strewn with packaging, mismatched cushions and other paraphernalia. Also, a free-standing cooker with empty bottles and discarded cardboard on it, and boxes of unidentified items on the floor;
 - A bedroom containing a single bed without sheets or pillows;
 - A bedroom with no bed, several unidentified items stored in the built-in cupboards and other unidentified items strewn across the floor;
 - The kitchen to have a kettle, built in oven and hob, and a sink. No fridge is visible. The surfaces are cluttered, not necessarily with kitchen paraphernalia, and there are items strewn across the floor; and
 - In the shower room a bottle of toilet cleaner and several unidentifiable items on the sink unit.
11. These photographs do not show the static caravan to be connected to services such as water or power. There is no evidence that the shower room or kitchen have any means of foul water disposal. If someone was living in the static caravan it would be a reasonable expectation to see food stored in the kitchen cupboards and in a fridge, a bed with sheets and pillows, and clothes stored in wardrobes, cupboards or drawers. The photographs show the only bed to be devoid of sheets and pillows and cupboards in the bedrooms to be devoid of clothing. Furthermore, there are no towels shown in the shower room or elsewhere. I appreciate that there are people willing to inhabit dishevelled and unkept accommodation. However, given the absences outlined previously and the cluttered and unkept appearance of the

³ North Norfolk District Council's Written Representation Statement dated December 2023

accommodation, I find the photographs do not show the static caravan to be used for residential purposes.

12. I accept that the photographs only show a 'snapshot' in time of the use of the static caravan. However, I saw during my site visit that there had been no significant change to the internal appearance of the static caravan since the date the photographs were taken.
13. The Council confirms that other buildings on the Land are being used for ancillary agricultural purposes, including the storage of animal feed. The lack of animal feed or other agricultural paraphernalia within the static caravan does not mean the static caravan was stationed for residential purposes.
14. The appellant refers to using the caravan for welfare facilities. I do not doubt that the static caravan would provide somewhere for the appellant to get out of the weather or to take breaks from his agricultural activities. The empty drinks bottles suggest that the static caravan is put to some purpose other than just being stored on the Land. I therefore find it more likely than not that the static caravan is being used for purposes ancillary to the agricultural use of the Land.
15. Taking all the above factors together, it has been shown, on the balance of probability, that the stationing of the static caravan on the Land was not for residential purposes. The allegation is therefore incorrect in so far as it relates to the mixed use including the stationing of a caravan for residential purposes.

The body part of a luton van

16. In their Statement, the Council state '*the fact the [the body part of a luton] van is not moved around the site and stays in one position...taking into consideration its size and degree of permanence the Council is of the opinion that this is operational development.*'⁴ This is at odds with the Notice, which includes the body part of a luton van with the motor vehicles and vans being stored or stationed on the Land, therefore comprising part of the alleged mixed use. The appellant contends the body part of the luton van is used to house poultry, that it is a moveable structure and is therefore a use of land, not operational development.
17. At the site visit I saw that the body part of the luton van was used to house poultry, which is an agricultural use. It is not uncommon for poultry shelters to be formed through the repurposing of vehicles or other structures. I saw the body part of the luton van has a light-weight appearance, which could, in my judgement, be easily relocated with the assistance of a tractor or similar agricultural vehicle. I therefore find, as a matter of fact and degree, the stationing of the body part of the luton van to house poultry constitutes an agricultural use of land.
18. For these reasons, the allegation is incorrect in so far as it relates to the body part of a luton van constituting part of the open storage and stationing of motor vehicles and vans element of the mixed use.

⁴ Paragraph 7.5 of the Council's Written Representation Statement

Conclusion on ground (b)

19. The appeal succeeds to the extent that I have found the stationing of the static caravan and the body part of a luton van do not constitute part of the unauthorised material change of use. S176(1) makes provision for me to correct any defect or misdescription in the Notice, providing it does not cause injustice to either the appellant or Council. There is no dispute that the Land is being used for a mixed use of agriculture and the storage and stationing of motor vehicles and vans or that the building unit exists. Furthermore, if the static caravan was used for residential purposes at some future date, enforcement action could be taken at that time.
20. The allegation shall be corrected to read '*Without planning permission: (i) a material change of use of the land from agriculture to a mixed use comprising of agriculture and the storage of motor vehicles and vans; and (ii) operational development consisting of the construction and/or siting of a building unit.*' This provides clarity and precision and would not cause injustice to the appellant or Council as they had chance to address these matters as part of their original submissions.
21. The steps required to be taken will need to be varied to reflect the corrected allegation. Steps (5) (i), (ii) and (iii) shall be deleted as there is no residential use of the static caravan to cease, and there is no need to remove the static caravan or body part of the luton van as they are used for agricultural purposes. The periods for compliance shall be similarly varied.
22. Furthermore, compliance with an enforcement notice does not discharge the notice. S181(2) of the 1990 Act provides that any step requiring a use of land to be discontinued shall operate as a requirement that shall be discontinued permanently. There is therefore no need for the varied steps required to be taken to include the word 'Permanently'.

Appeal on Ground (c)

23. An appeal on this ground is that the matters alleged do not constitute a breach of planning control. The appellant's case on ground (c) relates only to the static caravan. Given I have already concluded the stationing of the static caravan does not form part of the corrected allegation, there is no case for me to consider under ground (c).

Appeal on Ground (g)

24. An appeal on this ground is that the period of compliance specified falls short of what should reasonably be allowed. The appellant's case on ground (g) only relates to extending the compliance periods relating to the removal of the static caravan and body of the luton van. Given these periods are deleted because of the corrected allegation, there is no case on ground (g) for me to consider.

Overall Conclusion

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

Formal Decision

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

*In section (3) **The Matters Which Appear to Constitute the Breach of Planning Control**, the deletion of all the words and the substitution of the words 'Without planning permission: (i) a material change of use of the land from agriculture to a mixed use comprising of agriculture and the storage of motor vehicles and vans; and (ii) operational development consisting of the construction and/or siting of a building unit.'*

*In section (5) **What You Are Required To Do**, delete steps (i), (ii) and (iii) and renumber steps (iv), (v), (vi) and (vii) as steps (i), (ii), (iii) and (iv).*

*In section (6) **Time For Compliance**, delete periods (i), (ii) and (iii), and renumber periods (iv), (v), (vi) and (vii) as periods (i), (ii), (iii) and (iv).*

27. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR