



Appeal Decision

Site visit made on 6 August 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2024

Appeal Ref: APP/M1710/C/22/3312051

Land opposite Maskee, Stoney Lane, Medstead, Alton GU34 5EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Ms Catherine Penfold against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 10 November 2022.
 - The breach of planning control as alleged in the notice is Within the last 10 years and without planning permission - the material change of use from agricultural land to a mixed use of agriculture and C3 residential use.
 - The requirements of the notice are: (i) Cease the residential use of the Land (ii) Remove the caravans and campervans from the Land (iii) Remove all residential paraphernalia from the Land.
 - The period for compliance with the requirements is 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act. 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. 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 Act.

Main Issues

2. The main issues are:
 - Whether the site is an appropriate location for the development, with particular regard to the Council's spatial strategy;
 - The effect of the development on the character and appearance of the area;
 - The personal circumstances of the occupiers of the site, including the best interests of a child; and
 - The effect of the development on the living conditions of neighbouring residents, with particular regard to lighting, noise, and air/water pollution.

Reasons

Location

3. The site is located within the countryside, as referred to by Policy CP19 of the East Hampshire District Local Plan: Joint Core Strategy (2014) (JCS). This

outlines part of the Council's spatial strategy, which includes an approach to sustainable development in the countryside. The only development allowed in the countryside, outside settlement policy boundaries, will be that with a genuine and proven need for a countryside location. This includes development necessary for farming, forestry, and other rural enterprises.

4. The appellant claims to operate a small-scale farming business which is said to include the rearing of animals and the growing of vegetables. Very little evidence has been provided to show this is an active farming or rural enterprise dependent on the residential element of the mixed use of the site. As such, it has not been demonstrated that there is a genuine and proven need for the development in the countryside. The development does not therefore accord with the Council's spatial strategy, and it conflicts with Policy CP19 of the JCS.

Character and Appearance

5. The site comprises fields lined by a mix of hedgerows and trees. It is accessible by a narrow undulating private lane which serves a few remote fields and residential properties. More consolidated residential development surrounds open fields that border the site, but the immediate surroundings are distinctly rural in character.
6. The development has resulted in various items which are typical of residential use being placed on the land, including cars and campervans. Although some of these items could be associated with agricultural uses, there is no evidence to show that is the case in this instance. Residential items at the site are consistent with the description of the breach of planning control and are generally confined to a small area close to stables and the entrance to the site. They have a moderate impact on the wider landscape. However, even when spread over a relatively small area close to the boundary, these vehicles and any other residential items are at odds with the secluded natural surroundings.
7. Various items and activities with off-site effects are likely to be associated with the residential element of the mixed use of the land over time, such as lighting, refuse, domestic paraphernalia and vehicles coming and going. Noise associated with the residential element would also be different in character to that associated with an agricultural use. All of this would contribute to a very different and much more intensive use of the land, with more noticeable and uncharacteristic off-site effects, compared to its use solely for agricultural purposes. The effect of the development on the character and appearance of the area is not therefore comparable to an agricultural use, even with people regularly visiting to tend to animals and/or crops.
8. The residential element of the mixed use has a moderate harmful effect on the rural character and appearance of the area, and there are very limited opportunities for planting to further shield views into the site. In any case, this would not address the likely off-site effects of the development outlined above. The overall effect of the development remains harmful to the natural beauty and tranquillity of the countryside, and it is unlikely that planning conditions could be used effectively to address the harm.
9. The development harms the character and appearance of the area, contrary to Policies CP20 and CP29 of the JCS. These require, amongst other things,

development to conserve and enhance the special characteristics of the natural environment, and to respect the character of the countryside.

Personal Circumstances

10. The notice would require 4 occupants, including a child, to cease living at the site. At least one of the occupants may have a disability. They moved to the site after staying temporarily with family, having left a poor standard of rented accommodation in another part of the country. It is claimed that they do not have alternative accommodation elsewhere and that they have been discriminated against because of their race and/or religion. Living at the site is said to have improved the life and learning of the child.
11. I accept that occupiers of the site may have descendants who were Romany Travellers. However, there is nothing before me to suggest any of the current occupiers are gypsies or travellers for planning purposes, as defined in the Government's Planning Policy for Traveller Sites (2015). As such, I do not consider planning policy or other matters concerning gypsy and traveller sites relevant in this instance.
12. As my decision has the potential to affect a child, and because race, religion, age, and disability are protected characteristics under the Equality Act 2010, I must have regard to the Public Sector Equality Duty (PSED). Furthermore, Article 8 of the Human Rights Act 1998 (HRA) affords the right to respect for private and family life, home and correspondence, where the child's best interests are a primary consideration. I have therefore kept these interests at the forefront of my mind. Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their possessions, and no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In addition, Article 14 requires that the occupants' rights and freedoms shall be secured without discrimination on any ground, including race or religion. These are all qualified rights, and interference may be justified where it is in the public interest.
13. Compliance with the notice would make the occupants homeless, which would interfere with their rights under Article 8 and Article 1 of the First Protocol of the HRA. The best interests of the child would be to live or remain living in a stable environment. Moving away from the site would cause them stress and could disrupt their education, health and care. However, it may also result in all occupants living together in superior accommodation which also meets the needs of the child. This could remain the case even if the Council has refused to house the occupants previously due to a lack of connection to the area at that time. This would not result in discrimination.
14. I note the claimed benefits to the child resulting from them living in an unenclosed area, but there is little information to suggest that any alternative accommodation would necessarily be in an enclosed area or otherwise unsuitable. On the evidence, I consider it likely that the best interests of the child could be met by superior accommodation elsewhere.
15. It is not part of the appellant's case that the occupiers of the site would have difficulty finding, or be unable to find, suitable alternative accommodation. Indeed, I have not been provided with evidence that reasonable research has

been carried out into the availability of suitable alternative accommodation, other than enquiries made with the Council 2 years ago.

16. There would be stress and disruption caused to the occupiers of the site by complying with the notice. These considerations weigh in favour of the development, but I am unconvinced that the best interests of the child can only be met by the development. I shall return to this below.

Living Conditions of Neighbouring Residents

17. There are a small number of residential properties nearby. I have read various comments from neighbours alleging that their living conditions have been harmed by the development, but very little evidence has been provided to support those claims.
18. There would be an increase in the use of lighting associated with the development, as set out in the second main issue above. However, I do not see how such lighting would have an unacceptable effect on the living conditions of any neighbouring residents due to the planting around plots and the distances between neighbouring dwellings and the site.
19. Noise associated with the residential element of the mixed use would be extremely unlikely to have an unacceptable effect on the living conditions of neighbouring residents. This is on account of the likely volume and nature of such noise and the distances between plots.
20. I have been referred to fires and a lack of sanitation/hygiene/refuse facilities associated with the development which are claimed to create unacceptable air and water pollution. The appellant has explained that household waste is burned in a small garden incinerator on a daily basis and that foul water is dealt with by a septic tank. Bonfires are common in countryside locations, and I do not accept that the residential element of the mixed use is likely to lead to a significant increase in their frequency. While I appreciate that the burning of household waste on the land may cause a nuisance to neighbours, waste management details could be required to be approved by conditions if planning permission were to be granted.
21. In conclusion on this main issue, there is no evidence that the development causes unacceptable harm to the living conditions of any neighbouring residents which could not be addressed by planning conditions. I do not therefore find any conflict with Policy CP27 of the JCS, which seeks to prevent development which results in pollution prejudicing the health and safety of communities and their environments, amongst other things.

Other Matters

22. The site has been tidied and waste material has been removed since the change of use took place. However, I do not consider any improvements in the appearance of the site to be a direct result of it being used for residential purposes. Furthermore, there is little evidence that any improvements to the management of the site rely on the residential element of the mixed use.

Planning Balance and Conclusion

23. I have found that the development causes harms which conflict with the development plan on account of the location of the development in the

countryside and its effect on the character and appearance of the area. Against this, the personal circumstances of the occupiers of the site, including the best interests of a child, weigh in favour of the change of use. The development does not cause unacceptable harm to the living conditions of any neighbouring residents, and this lack of harm does not weigh against or in favour of the development.

24. For the reasons set out above I assign significant weight to the harms associated with the development and moderate weight to the personal circumstances of the occupiers of the site, including the best interests of the child. The personal circumstances of the occupiers do not indicate that my decision should be made other than in accordance with the development plan in this instance.
25. I accept that upholding the notice would result in the loss of a home for the occupiers of the site, including a child, which would infringe their rights under Article 8 and Article 1 of the First Protocol of the HRA. However, there is public interest in the legitimate and well-established planning policy aims of managing the location of development and protecting the character and appearance of the area. Having regard to that public interest, I find that dismissing the appeal and refusing the deemed application for planning permission would be proportionate and necessary and would not unacceptably violate the rights of the occupiers of the site under Article 8 or Article 1 of the First Protocol. Any adverse effects that upholding the notice would have on the best interests of the child would be justified and proportionate, and the protection of the public interest in this case cannot be achieved by means that are less interfering with the occupiers' rights.
26. I have had due regard to the PSED, but the harms caused by the development outweigh any benefits in terms of eliminating discrimination against persons with the protected characteristics of race, religion, age and disability, advancing equality of opportunity for those persons, and fostering good relations between them and others.
27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR