



Appeal Decision

Inquiry held on 29 and 30 August 2024

Site visit made on 29 August 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/M2372/C/24/3343383

Land at Former Hob Lane Farm (previously 475 Blackburn Road, Edgworth, Turton BL7 0PU)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Kenneth Warner against an enforcement notice issued by Blackburn with Darwen Borough Council.
 - The notice was issued on 26 March 2024.
 - The breach of planning control as alleged in the notice is the material change of use of the land to that of a residential use, by virtue of the siting of a caravan used for residential purposes.
 - The requirements of the notice are to: Cease the residential use of the land.
 - The period for compliance with the requirements is: Six months.
 - 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).
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Decision

1. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of the requirement in its entirety and substitute the words "Cease the residential use of the caravan".
2. Subject to the above variation, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Kenneth Warner against Blackburn with Darwen Borough Council. This application is the subject of a separate decision.

Procedural Matters

4. A Case Management Conference (CMC) was held online on 2 July 2024 with the appellant and representatives of the Council. The CMC was held to discuss the arrangements for the Inquiry and not the merits of the appeal.
5. All oral witness evidence to the Inquiry was given under oath or affirmation.

Ground (c)

6. An appeal on ground (c) is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.

7. The appeal site is predominantly open grassed land. Also on the site is a caravan, a moveable structure that meets the statutory definition of a caravan, along with a small area of hard standing and a vehicular access. The wider land that falls under the ownership of the appellant also includes a detached dwelling known as White Lodge Farm which was granted planning permission by the Council in 2019¹.
8. Much of the appellant's case on ground (c) is that the caravan is situated within the curtilage of White Lodge Farm, and therefore the land has a lawful residential use. However, in determining an appeal² under section 195 of the 1990 Act, a previous Inspector concluded that the red edged area on the submitted plan (which encompassed part of the land subject of the enforcement notice) did not define the curtilage of White Lodge Farm. In particular this was because the static caravan, which was occupied separately from the dwelling, fell within it.
9. Nevertheless, irrespective of whether or not the caravan is located within the curtilage of White Lodge Farm, the issue for me to determine is whether a new planning unit has been created by the separate primary use of the land for the siting of a caravan for residential purposes.
10. The leading case relating to planning units is *Burdle*³. It was held in *Burdle* that the planning unit is normally the unit of occupation unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. Three broad categories are identified for planning units, which are:
 - a) A single unit of occupation with a single primary use with ancillary and incidental activities;
 - b) A single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use); and
 - c) A unit of occupation with two or more physically separate areas which are occupied for different and unrelated purposes. Each area in this scenario forms a separate planning unit.
11. The appellant confirmed under cross-examination that the caravan was occupied by his son from around May or June 2023 until July 2024, and that it was his position that the caravan was a separate planning unit. The caravan was occupied by the appellant's son as his primary residence, Council Tax was paid, and a new separate address "Wheat Brook View" was created. There is no evidence to suggest that the use and occupation of the caravan was part and parcel of the use of White Lodge Farm.
12. It therefore seems clear that the caravan was occupied for residential use at the time the notice was issued, and moreover it was occupied as a dwelling separately from White Lodge Farm as described above such as to amount to a material change in the use of the land by the formation of a new planning unit.
13. There are no permitted development rights which would authorise this material change of use, which means it would have needed planning permission to be

¹ Council Ref: 10/19/0149

² APP/M2372/X/23/3320474

³ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

lawful. There is no dispute between the parties that planning permission has not been obtained, and therefore the material change of use constitutes a breach of planning control. The appellant's argument that the use has existed at the site for over 50 years and is now lawful is addressed under the ground (d) appeal below.

14. The appellant has failed to show, on the balance of probability, that the matters alleged do not constitute a breach of planning control. The appeal on ground (c) therefore fails.

Ground (d)

15. In order for the appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late to take enforcement action. The burden of proof is on the appellant and the relevant test is the balance of probability. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
16. With regard to the use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful, the alleged use must have commenced at least 10 years before the date of the notice and continued without any significant interruption thereafter for at least a 10-year period of time.
17. The appellant contends that a caravan was first brought onto the site in 1974 and subsequently occupied by a Mr & Mrs Parry until their passing in 1980 and 1994 respectively. The evidence presented to support this claim consists of:
- Phone book entries from 1975, 1977, and 1990 which all list a telephone number for "The Caravan" at Hob Lane Farm. (Phone book entries from 1973 and 1992 were also provided, however these do not specifically refer to a Caravan at Hob Lane Farm)
 - An email from Electricity North West dated December 2020 confirming that mains electricity had previously been provided to "The Caravan, Hob Lane Farm, Edgworth, Bolton, Lancashire, BL7 0PU". It was further confirmed that this supply was now disconnected.
 - A written statement given by Maureen Middleton, the daughter of Mr & Mrs Parry, stating that her parents lived in the caravan at Hob Lane Farm from 1974 until their deaths in 1980 and 1994 respectively.
 - Three photographs dating from the 1970's showing a caravan on the land at Hob Lane Farm.
 - Written and oral evidence given to the Inquiry by Gillian Mather and Mark Mather regarding their knowledge of the site during this period.
18. The evidence given by Gillian Mather included detailing the use of the land when the caravan was occupied by Mr & Mrs Parry. In particular, it was explained that Mr & Mrs Parry did not work on the farm and had no links to the farm ownership, the caravan was self-contained with its own services, and that

the caravan was enclosed by a fence with the remainder of the field used for the keeping of animals, which were predominately cows.

19. The statement that the caravan was enclosed by a fence is supported by the photographic evidence which clearly shows a fence surrounding the caravan, seemingly enclosing a small patio area. Although its precise position is unknown, given both the physical and functional separation from the wider farmland and agricultural use, I find that the caravan and the immediately surrounding land enclosed by the fencing will have formed its own separate planning unit. The remainder of the wider farm site will have formed a second much larger planning unit in agricultural use.
20. Having regard to the totality of the evidence, including that heard and examined during the Inquiry, I am satisfied that, on the balance of probabilities, by 1994 a caravan had been sited and used for residential purposes for a continuous period in excess of 10 years. The Council has no evidence of its own, or from others, to contradict or otherwise make the version of events put forward by the appellant less probable.
21. Once it had acquired lawfulness, the Council would be unable to take enforcement action so long as the use had not subsequently been abandoned, superseded by a further material change of use, or a new planning unit formed⁴.
22. Following the death of Mrs Parry in December 1994 the caravan was given to Mr Chris Mather. There then follows an eleven-year period between 1995 and 2006 where the use of the caravan becomes less clear. There does not appear to be any residential use during this period, save for Chris Mather occasionally staying overnight to tend to his pigeons, but it is instead used for leisure and recreational purposes by Mark Mather and his friends. The Council contend that this is an intervening use which interrupts any immunity acquired.
23. Nevertheless, in 2006 the situation changes significantly. Following the breakdown in the marriage of Mr & Mrs Mather, Chris Mather left the family home and moved into the caravan as his main residence. The fence which had previously existed around the caravan was now gone and electricity was provided from the cottage at the farm via extension cables. Farming operations on the land also ceased in 2006. Although it is not possible to be precise over the exact boundaries of the planning unit at this point, it is clear that the unit must now incorporate the cottage and therefore cover a much larger area.
24. When applying the relevant tests as set out in *Burdle*, from the available evidence it is apparent that when Mr & Mrs Parry occupied the caravan on the land there were two physically separate areas which were occupied for different and unrelated purposes. Each area therefore formed a separate planning unit. However, upon occupying the caravan in 2006 and following the cessation of farming activities at the site, Mr Mather created one large residential planning unit which was a single unit of occupation with a single primary use. This formation of one large single planning unit represents a new chapter in the planning history of the site and re-starts the clock for immunity purposes. Any accrued immunity was now lost, and a continuous period of 10 years would need to be demonstrated from 2006 onwards.

⁴ Panton & Farmer v SSETR & Vale Horse DC [1999] JPL 461

25. Mr Mather subsequently occupied the caravan as his primary residence from 2006 until shortly before his death in December 2015. This period falls short of the required ten years.
26. It was clear from the evidence given to the Inquiry that over the ensuing seven years the caravan fell into a serious state of disrepair. The Council's witnesses described the caravan as being "derelict", "abandoned", "not liveable", "mouldy", "damp", and "dilapidated". This was supported by the photographic evidence produced by the Council's enforcement officer from 2018 and 2020 which showed the caravan to be severely damaged. It was clear that one end of the caravan was missing, resulting in it being partially open to the elements.
27. Between 2015 and September 2018 the entirety of Hob Lane Farm, including the caravan and various buildings, was vacant and unoccupied. The appellant asserts that following his purchase of the site in September 2018 the caravan was occupied "intermittently" by his sons until its removal from the site in 2022. Following its removal, there then followed a period where there was no caravan on the site at all until the current caravan was brought onto site in May 2023 which was occupied by the appellant's son until July 2024. At no point post 2006 is the residential occupation or use of the caravan demonstrated for a continuous 10-year period.
28. The Council submitted that the period following 2015 resulted in the use being abandoned, having regard to the four criteria established in *Trustees of Castell-y-Mynach Estate*⁵. However, the concept of abandonment does not apply to uses that have not acquired lawfulness. In essence, the concept is that the lawful use of the land is capable of being abandoned and those rights may be lost⁶. In this case though, for the reasons set out above, the use which had been formed in 2006 had not become lawful through the passage of time.
29. In conclusion, between 1974 and 1994 a caravan which was occupied for residential purposes acquired lawfulness through the passage of time. This lawfulness though was extinguished in 2006 at the latest when a new planning unit was formed, which re-started the clock for immunity purposes. This new use did not continue without any significant interruption thereafter for a continuous period of at least 10-years.
30. The appellant has not therefore demonstrated, on the balance of probability, that the alleged use, comprising the material change of use of the land to a residential use, by virtue of the siting of a caravan used for residential purposes, was immune from enforcement action on the date that the notice was issued. Accordingly, the appeal on ground (d) fails.

Ground (f)

31. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
32. The single requirement of the notice is to cease the residential use of the land. However, the appellant contends that the enforcement notice red line plan

⁵ *Trustees of Castell-y-Mynach Estate v Taff Ely BC* [1985] JPL 40

⁶ *M & M (Land) Ltd v SSCLG* [2007] All ER(D) 55

includes an area of land that has a lawful development certificate and an extant planning permission for a residential garage. Consequently, it is argued that this land falls within the curtilage of White Lodge Farm and therefore benefits from a lawful residential (C3) use. The Council accepted at the Inquiry that the enforcement notice plan did include such land.

33. As a result, the appellant considers that the requirement of the notice goes against the *Mansi*⁷ principle and seeks to prohibit a lawful use of the land. In effect, the *Mansi* principle established that an enforcement notice should not affect any existing use rights and should not be worded to prohibit lawful development after compliance and should be interpreted as far as is possible to avoid a conflict.
34. In response the Council referred to the case of *Cord*⁸, which sets out that there is no need to insert a saving for that which must be obvious. Put simply, the Council's position is that the lawful use of the residential curtilage of White Lodge Farm would not be a breach of planning control and so would not offend the enforcement notice or its requirements, and there is no need to draft the notice to make this explicit.
35. Nevertheless, the Council stated that it was amenable to varying the requirement so that it read "Cease the residential use of the caravan". Mr Warner confirmed in cross examination that the proposed variation would overcome his concerns. I agree that this would remove any ambiguity, and I have therefore varied the notice so that it specifically requires the residential use of the caravan to cease.
36. Given that the notice does not require the physical removal of the caravan itself from the land, nor is there any associated domestic paraphernalia on the land surrounding the caravan, the variation to substitute a requirement to cease the residential use of the caravan will still achieve the intended purpose of remedying the breach of planning control. The variation also does not prevent the appellant from using any part of the site for its lawful use, including both the residential and agricultural areas of the appeal site, or indeed prevent the use of the caravan in association with that lawful use. I am therefore satisfied that the variation does not prejudice either party.
37. As such, the appeal on ground (f) succeeds to that extent and I have varied the notice accordingly.

Conclusion

38. For the reasons given above I conclude that the appeal fails, save for a limited extent under ground (f). I have therefore upheld the enforcement notice as varied.

David Jones

INSPECTOR

⁷ *Mansi v Elstree RDC* [1964] 16 P&CR 154

⁸ *Cord v SSE & Torbay BC* [1981] JPL 40

APPEARANCES

FOR THE APPELLANT:

Kenneth Warner	Representing himself as the appellant
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He called:

Himself	Appellant
Gillian Mather	Factual Witness
Mark Mather	Factual Witness

FOR THE LOCAL PLANNING AUTHORITY:

Constanze Bell	Counsel instructed by Legal Services, Blackburn with Darwen Borough Council
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She called:

Louis Readey	Local Resident
Sean Readey	Local Resident
Richard Waters	Planning Enforcement Officer, Blackburn with Darwen Borough Council

INTERESTED PARTIES:

Cllr Jean Rigby	West Pennine Ward Councillor
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Documents submitted at the Inquiry:

1. Photograph of a caravan on the appeal site in the 1970's
2. Appellant's opening statement
3. Council's opening statement
4. Appellant's closing submissions
5. Council's closing statement