



Appeal Decisions

Site Visit made on 8 April 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2025

Appeal A Ref: APP/E9505/C/23/3322948

Appeal B Ref: APP/E9505/C/23/3322949

Appeal C Ref: APP/E9505/C/23/3322890

Appeal D Ref: APP/E9505/C/23/3322891

The Berney Arms, Berney Arms, Reedham, Norfolk, NR30 1SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Carlton St Peter Properties Ltd (Appeal A), William Hollocks (Appeal B), Jeanette Southgate (Appeal C) and Alan Simmons (Appeal D) against an enforcement notice issued by Broads Authority (the LPA).
 - The notice was issued on 26 April 2023.
 - The breach of planning control as alleged in the notice is. without planning permission, the material change of use of the Land from land with a use ancillary to a public house to land for a mixed use ancillary to a public house and the stationing and residential occupation of static caravans in the approximate positions marked A and B, of the touring caravans in the hatched area marked D and of the building marked C for purposes not ancillary to the public house.
 - The requirements of the notice are:
 1. To permanently cease the use of the Land for the standing and use of the static caravans marked A and B, the touring caravans marked D and the building marked C for residential purposes; and
 2. To remove the static caravans marked A and B and any structures, fixtures or otherwise upon which they sit from the Land; and
 3. To remove the touring caravans marked D and any structures, fixtures or otherwise upon which they sit from the Land
 - The periods for compliance with the requirements are: three months for requirement 1 and four months for requirements 2 and 3.
 - The appeals are proceeding on the grounds set out in section 174(2)(d), (f) of the Town and Country Planning Act 1990 (as amended).
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Formal Decisions

1. It is directed that the enforcement notice is corrected by:

- the deletion of the words:
 - “Without planning permission, the material change of use of the Land from land with a use ancillary to a public house to land for a mixed use ancillary to a public house and the stationing and residential occupation of static caravans in the approximate positions marked A and B, of the touring caravans in the hatched area marked D and of the building marked C for purposes not ancillary to the public house”
- and their substitution with the words,
- “without planning permission, the material change of use of the Land from a public house to a mixed use of a public house, the stationing of static caravans for residential occupation in the approximate

positions marked A and B on the plan attached to the notice, the stationing of touring caravans for residential occupation in the hatched area marked D on the plan attached to the notice and the residential use of the building marked C on the plan attached to the notice”, in section 3 of the notice.

2. And varied by:

- the deletion of the words:
 - “To permanently cease the use of the Land for the standing and use of the static caravans marked A and B, the touring caravans marked D and the building marked C for residential purposes:
- and their substitution with the words:
 - “Cease the use of the Land as a mixed use of a public house, the stationing of static caravans for residential occupation in the approximate positions marked A and B on the plan attached to the notice, the stationing of touring caravans for residential occupation in the hatched area marked D on the plan attached to the notice and the residential use of the building marked C on the plan attached to the notice” in section 5.1 of the notice.

3. Subject to the correction and variation, Appeals A, B, C and D are dismissed, and the enforcement notice is upheld.

Procedural Matters

4. Whilst the four appeals have been made by separate parties, they are all made in relation to the same enforcement notice and have been made on the same grounds. I have therefore dealt with the appeals in the round albeit separate decisions are made on each.
5. The points raised by the appellants in respect of: whether the breach of planning control supports the three obligations under the Broads Act 1988; the business plan and aspirations put forward for the future the site; the need for the development for site maintenance and security; environmental benefits; alternative housing; and, lack of harm to character and appearance of the area, flood risk, wildlife or the living conditions of others, all go to the planning merits of the residential use of the Land. Such matters are not relevant to an appeal on ground (d) or (f) and are only relevant where an appeal on ground (a) is brought. Appeals on ground (a) have not been brought. Thus, it is not open to me to consider the planning merits or otherwise of the breach of planning control stated in the notice.
6. Any matters regarding the lawfulness or remit of the Broads Authority are not for my consideration.

The Enforcement Notice

7. The enforcement notice is directed against an alleged breach of planning control comprising a material change of use of the Land edged in red on the plan attached to the notice from a use ancillary to a public house to a mixed use of a use ancillary to a public house and residential. However, the concept of a mixed use is more than one primary use taking place within the same planning unit. By definition, an

ancillary use cannot be a primary use. A material change of use thus cannot be made to an ancillary use because, as held by the High Court in *Sage*¹, an ancillary use is in law part of the single main use and is not a separate use at all.

8. There is thus a misdescription in the notice which it is open to me to correct under S176(1) of the Act, if I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
9. To that end, the notice relates to the entirety of the Land edged in red on the plan attached to it. That land includes The Berney Arms Public House. Whilst the main building of the public house is currently vacant, and has been since 2015, there is no evidence that the lawful use of the Land as a public house has been lost. Even if the LPA do not require the public house use to cease, it is not open to them to decouple elements of a mixed use. The use of the Land is the single mixed use with all its components, lawful or otherwise. Having regard to the tests laid down in *Burdle*², I am satisfied that the Land is a single planning unit and the alleged breach has resulted in that planning unit being put to a mixed use comprising a public house and the residential use of the Land involving the siting of the static caravans, touring caravans and residential use of the building.
10. To that end, it is open to me to correct the allegation to reflect that such a material change of use had taken place by the time the notice was issued. No injustice would arise to the LPA or the appellant as a consequence.
11. Accordingly, it is necessary to also vary the requirements of the notice to ensure the mixed use now correctly referred to in the breach ceases. Where some lawful activity is referred to in the allegation, the notice cannot require it to cease. The notice, as corrected and varied, therefore requires the mixed use of the Land to cease. It does not extinguish any previous lawful use of the Land.

Appeals A, B, C and D on ground (d)

12. An appeal on ground (d) is brought on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice.
13. S171B of the Act sets out the relevant time limits for taking enforcement action. The time limits have recently been amended with transitional arrangements in place³. In this instance, the relevant period is ten years beginning with the date of the breach.
14. It is necessary, therefore, for the appellants to demonstrate that the material change of use of the Land from a public house to a mixed use of a public house, the stationing of static caravans for residential occupation in the approximate positions marked A and B on the plan attached to the notice, the stationing of touring caravans for residential occupation in the hatched area marked D on the plan attached to the notice and the residential use of the building marked C on the plan attached to the notice, took place on or before 26 April 2013 and the use continued thereafter for 10 years without interruption.

¹ *Sage v SSHCLG & Bromley LBC* [2021] EWHC 2885 (Admin)

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

³ Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

15. The appellant says that the two static caravans have been on the Land and used for residential and staff accommodation for over 30 years. However, the appellants do not say with any degree of precision when the static caravans were brought onto the site or, more importantly, when residential use of them commenced. Nor do they say when residential use of the chalet building commenced – only that it was over 20 years ago. Moreover, the appellants do not put a timescale at all for the siting of the touring caravans and the commencement of their use for residential.
16. There is little evidence before me about the periods when the caravans or the chalet building were occupied for residential use, including whether there were any periods of non-occupancy. A letter from a Mr Pennington indicates he lived in one of the static caravans as temporary accommodation during 2017/2018. However, he does not offer any specific dates for his residence. Moreover, whilst he states that Council Tax was paid, there is no documentary evidence from him to that effect before me. He provides two photographs, one externally, one internally, of a static caravan which he indicates were taken in 2017. Whilst the photographs are undated, even if they were taken in 2017, they do not assist in demonstrating that the residential use commenced on or before 26 April 2013.
17. The appellants indicate that the chalet building is on the local rates list but do not provide any documentary evidence to that effect either. Furthermore, there is little contemporaneous evidence which indicates that the static caravans, the touring caravans or the chalet building have been used for residential purposes for a period of 10 years since their use commenced. The appellants state that the touring caravans have been charged domestic rates but again, no documentary evidence to support that is before me. There are no bills, bank statements or other documents which may assist nor indeed any sworn affidavits or statutory declarations from present or previous occupiers.
18. Photographs provided of the static caravans, are undated and offer little assistance in establishing the mixed use of the Land as a public house and residential for a continuous period of 10 years on or before 26 April 2013. The image provided by the appellant in support of Appeal C which is said to have been taken in 2007 is somewhat blurry and whilst one static caravan can be made out, the image itself is undated. In any event, it does not assist in demonstrating whether actual residential use of the caravan subsisted at whatever point in time the photograph was taken. Moreover, the appellants state that the “place” was empty for two years following closure of the public house 10 years ago and that no static caravans have been brought onto the site since the arrival of known residents in the last 8 years. This suggests that current residents did not begin living on the Land until 8 years prior to the enforcement notice being issued. Furthermore, the appellant in Appeal C states that only one of the static caravans is inhabited, again suggesting an undefined period of non-use.
19. The appellants cite a 2015 planning application in respect of the site, in the officer report for which the LPA described the site as incorporating a public house, a shop which has ceased trading, a pair of chalets which have ceased to be used and a pair of static caravans only one of which is in use currently.
20. However, the situation on the site in 2015 does not assist in demonstrating ten years of the continuous mixed use of the Land as a public house and residential

use of static caravans, touring caravans and the chalet building from on or before 26 April 2013. Moreover, in any event, the description of the Land at the time of that application does not assist in demonstrating actual use of the Land for such a use at that point in time.

21. In contrast the LPA indicates it visited the Land on several occasions since 2013, including 26 September 2014, 12 May 2016, 13 June 2018 and 26 February 2019. It says that on none of those occasions were both of the static caravans occupied for residential use.
22. The LPA served a Planning Contravention Notice in February 2023. The responses indicate that the static caravans were occupied on an Assured Shorthold Tenancy (AST) which commenced on 1 September 2019 with an AST for the chalet building since 1 September 2021. This does not assist in demonstrating continuous residential use of 10 years on or before 26 April 2013.
23. A letter dated 11 August 2023 from the Broads Authority in respect of Council Tax records indicates that the appellant in respect of Appeal C was registered at living at the mobile touring caravan at the site since 16 November 2019, another person registered as living at the touring caravan since 17 October 2019 and another living at The Chalet since 1 September 2021. Again, none of that assists in demonstrating 10 years continuous residential use on or before 26 April 2013.
24. To that end, whilst I have had regard to all the evidence submitted by the appellants, I find the evidence is not sufficiently precise and unambiguous and the evidential burden of proof has not been satisfied.
25. I conclude, therefore, that it has not been demonstrated that the material change of use of the Land from a public house to a mixed use of a public house, the stationing of static caravans for residential occupation in the approximate positions marked A and B on the plan attached to the notice, the stationing of touring caravans for residential occupation in the hatched area marked D on the plan attached to the notice and the residential use of the building marked C on the plan attached to the notice, took place on or before 26 April 2013 and that it continued thereafter for 10 years without interruption.
26. Consequently, at the date when the notice was issued, enforcement action may have been taken in respect of the breach of planning control stated in the notice.
27. The appeals on ground (d) therefore fail.

Appeal A, B, C and D on ground (f)

28. An appeal on ground (f) is brought on the basis that 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 or, as the case may be, to remedy any injury to amenity.
29. The purpose of the notice, under S173(4) of the Act, is to remedy the breach of planning control by discontinuing any use of the Land. The appellants' submissions on the ground (f) largely go to the conduct of the LPA. They do not proffer any lesser steps than those in the notice, as corrected, which would remedy the breach of planning control.

30. Indeed, it seems to me that any step other than cessation of the mixed use which comprises the breach, the removal of the static caravans, the touring caravans and any structures or fixtures would not remedy the breach of planning control.
31. There are no obvious alternatives before me which would overcome the planning harm at less cost and disruption to the appellants.
32. The appeals on ground (f) therefore fail.

Human Rights

33. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the use of the Land for residential purposes would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
34. The consequence of dismissing the appeals would be that the occupants of the caravans would lose their home. However, the notice provides a three-month compliance period which would allow them time to find an alternative home. Furthermore, there is no indication that those persons would necessarily be made homeless beyond that date.
35. The planning harm identified by the LPA in the enforcement notice in respect of the suitability and sustainability of the location for residential development, the effect on flood risk, the effect on the character and appearance of the area and whether the development provides satisfactory living conditions for current and future occupiers of the Land, are of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Overall Conclusion

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation.

J Whitfield

INSPECTOR