The Planning Inspectorate

Appeal Decision

Site visit made on 22 July 2020

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/B2002/C/18/3219573
Land lying to the South of Ashby Hill, Ashby-cum-Fenby, North East Lincolnshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Melanie Stewart against an enforcement notice issued by North East Lincolnshire Council.
- The enforcement notice was issued on 21 November 2018.
- The breach of planning control as alleged in the notice is without planning permission the change of use of part of the property from land associated with the keeping of horses to a use of land for the siting of a static caravan for the purposes of residential use.
- The requirements of the notice are (i) cease the use of the land for residential purposes; (ii) remove from the land the static caravan; and (iii) remove from the land all domestic paraphernalia and services used in association with the unauthorised residential use.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) & (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 a correction and a variation.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matter

2. The Land subject to the enforcement notice is defined in Part 2 of the notice as being the whole of the land edged red. However, the alleged breach of planning control refers to a change of use of "part of the property", without specifying which part. The Council has confirmed that the notice is intended to refer to the whole of the land edged red. On that basis, it appears to me that the allegation should properly refer to a mixed use of the authorised use of the land and the siting of the caravan. The parties have agreed that the allegation can be corrected to read "Without planning permission, the change of use of the Land from use for the keeping of horses at livery to a mixed use for the keeping of horses at livery and the siting of a static caravan for residential purposes." I am satisfied that this correction can be made without causing any injustice to the parties.

The appeal on ground (d)

3. The appeal site lies in open countryside to the West of the village of Ashby-cum-Fenby and comprises a large, rectangular area of grass land, fenced off into paddocks, which slopes gently upward towards Ashby Hill. In the Eastern corner of the site is a substantial stable block, adjacent to which is a manège. A twin unit mobile home is sited a short distance to the SW of the stable block. Beyond the SW boundary of the appeal site is a further grassed paddock and a detached house in large grounds, Oakdene. Both of these formerly belonged to the appellant's family but are now separately owned. I understand that there were stables at Oakdene, used by the appellant's family, in addition to the stable block on the appeal site.

4. An application for a certificate of lawful use or development of the appeal site for the stationing of a mobile home and the use of a container for storage was made in 2012 and dismissed on appeal in August 2015 (Ref: APP/B2002/X/14/3000223). In his decision letter, in relation to the claim that the caravan (which was sited on the current appeal site) had been present for over 10 years from around 2001, the Inspector stated *"… the appellant acknowledges that the caravan was vacant from between 2004 and 2008, some 4 years or thereabouts."* and *"Although the caravan may have been used from time to time to provide overnight accommodation as described by Mr D.Jebb[1], I do not equate this apparently occasional use, even if it extended to several nights in one instance, with a continuous or permanent residential occupancy."* He also noted that the caravan was said to have been used for storage, possibly supplanting any residential use.

5. The appellant's case now revolves around the claim that a residential caravan was sited in breach of planning control on land adjacent to Oakdene in 1972 and was lived in continuously until 1982; at that point it gained immunity from enforcement action. Although this initial residential caravan was sited beyond the boundary of the present appeal site, it was at that time all part of a larger, single planning unit, which included the present appeal site, and was used as "land in use for residential caravan and the keeping of horses." It is submitted that this use then continued without cessation or abandonment in various locations within the original planning unit, up to the date of this appeal. In such a case, once a lawful use was established, there would be no need to demonstrate continuous occupation, as there was in the 2015 appeal, as periods of dormant use would not amount to abandonment or cessation of the use.

6. Turning first to the position in the 1970s, the Council has pointed to a planning application made in 1973 for a mobile caravan to house a groom at Oakdene (LPA ref: GY/139/73), which was refused. The application details give no indication of the presence of a caravan on site. A further application in 1973 to erect a 2 bedroom bungalow for a groom and domestic servant adjacent to Oakdene (LPA ref: GY/601/73) gave the following contemporaneous supporting information from Mr D.Jebb: *"I must mention that they [the staff looking after the horses] are both single and cannot afford to buy accommodation and therefore still live with their separate parents in different parts of Grimsby."*

[1] Mr D.Jebb is the appellant's father.

7. The submitted letters from friends and family of the appellant now appear to contradict the above evidence, indicating a groom, Joan Wardle, lived on site in a caravan from 1971 - the location is not indicated. A rate demand from the Council in 1974 indicates a caravan at Oakdene but there is no indication of its siting. Taken as a whole, the evidence on this matter is to my mind imprecise and ambiguous.

8. Even if I were to accept the appellant's evidence on this matter, there is a further factor to take into account. In 1989 an application for the change of use of private stabling to livery stables was granted by the Council (LPA ref: 08/89/0691). The application site and land stated to be in the applicant's control, indicated to be "5 acres west of stables", equates to the present appeal site i.e. the unit of occupation excludes Oakdene, its stables and a further area of paddock land.

9. A further application was made in 1990 to erect a dwelling for a livery yard manager within the land identified in the above application i.e. the current appeal site (LPA ref: 08/90/0401). It was refused by the Council but the details on the application make it clear that the 1989 permission had been implemented by this time. The use for livery purposes could not be realistically implemented without using the associated land (i.e. the present appeal site, which appears to be the unit of occupation). Although the extended site, including the land adjacent to Oakdene, remained in the appellant's family ownership until 2002, that does not, to my mind, indicate it continued to be a single planning unit, incorporating the present appeal site.

10. I agree with the Council that a new planning unit was formed on the implementation of the 1989 permission. The courts[2] have indicated that whenever it is possible to recognise a single main purpose of the occupier's use of his land, to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That appears to be the case with the permitted livery use. In the 1989 application, there is no indication of the presence of a caravan on site and it is highly unlikely that the Council would have determined the application without undertaking a site visit, during which any residential caravan would have been observed. Such a caravan would not have been ancillary or incidental to the permitted use of the land.

11. Even if an accrued planning use right to site a residential caravan on the original, larger planning unit had been demonstrated, it would have been lost by the formation of a new planning unit and by way of a material change of use to livery use[3]. The implementation of the 1989 permission signalled the start of a new chapter in the planning history of the site.

12. I have seen nothing in the evidence to alter the conclusion reached by the Inspector in 2015 that the appellant had failed to demonstrate a continuous period of residential accommodation in the previous 10 years. Nor have I seen any new evidence that is sufficiently precise and unambiguous to lead me to a different conclusion up to the date of the present notice in 2018.

13. The fact that a caravan might have been present on site since 2001 is no indication of its actual use. The Council has conducted a number of

[2] Burdle and Williams v SSE & New Forest DC [1972] 1 WLR 1207
[3] Panton & Farmer v SSETR [1992] 1 PLR 92

enforcement investigations over the period from 2001 to 2018 and clearly visited the site on many occasions. Two cases were closed and four enforcement notices were issued but later withdrawn. It is difficult to draw conclusions of any great weight from this sequence of events. However, given the Council's continued and consistent resistance to a dwelling of any type in this area of open countryside, I find it most unlikely that, if there was evidence of continuous residential occupation, more decisive enforcement action would not have been taken.

14. The fact that Council Tax was paid for a residential caravan for a period ending 31 March 2002 and not again until the present twin unit caravan was moved onto the site in October 2107 weighs against the appellant's version of events. The appellant does not dispute that there was a period when Council Tax has not been paid and that there have been periods when the caravan was not actually occupied. This lack of occupation appears to be broadly consistent with the evidence of the tenant of the land throughout the 2001 to 2015 period. The appellant's submission that the period of non-use does not amount to abandonment is not relevant until a lawful use has first been recognised; that is not the case here.

15. The onus is on the appellant to demonstrate her case, on the balance of probability and, to my mind, she has failed to meet the appropriate test. The appeal on ground (d) fails.

The Appeal on ground (f)

16. The appellant submits that the requirement to remove the caravan and the associated services is unreasonable as a caravan has been present on the original land holding since 1972 and on the appeal site since 2001. When the Council sought to take enforcement action against a 2nd caravan in 2013 the enforcement notice (which was subsequently withdrawn) indicated that the first caravan was unaffected by the notice.

17. The authorised use of the appeal site appears to me to be the keeping of horses at livery, pursuant to the implementation of the 1989 permission. The siting of a caravan on the land which was used ancillary or incidental to this purpose would not amount to a material change of use. However, that would not apply to a caravan sited for residential purposes. The appellant indicates that the present twin unit caravan arrived on the appeal site in September 2017. Its size and design are such that it is clearly intended for residential use and could not reasonably be needed or used for a purpose related to the stables or adjoining paddock land. The provision of services is clearly linked to the residential use and I consider it reasonable and necessary that they should be removed along with the residential caravan.

18. The appeal on ground (f) fails.

The appeal on ground (g)

19. The appellant submits that a period of 3 months is too short a time to find alternative accommodation, arguing that an alternative site in the vicinity would need to be acquired, and the necessary consent secured, which would be acceptable to the Council for the siting of a residential caravan.

20. The planning history indicates that there have been three applications for permanent dwellings on the appeal site since 1990 in connection with the use of the stables, all of which have been refused by the Council. Accordingly, there appears to be little evidence that an alternative site in the near vicinity is necessary to support the authorised use of the land and no evidence of a housing shortage in the wider area.

21. The appellant has known since the 2015 appeal decision that lawful use for the siting of a residential caravan has not been demonstrated. That did not prevent her making a further application if additional evidence was available but more than 3 years elapsed without any such application before the Council issued the present notice. Nonetheless, I accept that to find an alternative dwelling could take more than three months and consider a period of 6 months, as now agreed by the Council, to be more reasonable. To that extent, the appeal on ground (g) succeeds.

Other matters

22. I have seen no evidence to suggest that the enforcement notice was not properly issued in accordance with the Council's procedures and policies or that the enforcement action was not in accordance with national guidance.

23. I have taken account of the Human Rights Act 1998, Articles 1 (peaceful enjoyment of possessions) and 8 (respect for private and family life). These are qualified rights, whereby interference may be justified in the public interest. Dismissing the appeal would interfere with the appellant's rights under Articles 1 and 8. However, it would be unlikely to result in her being homeless, given my conclusion on ground (g) to extend the period of compliance with the notice. Having regard to the legitimate and well-established planning policy aims to protect the countryside and the character of rural areas, the upholding of the notice would be proportionate and necessary. It would not unacceptably violate the appellant's rights under Articles 1 and 8. In this case, the objectives of the planning policy could not be met by a less intrusive action. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Formal Decision

24. It is directed that the enforcement notice be corrected by replacing Part 3 of the notice with: "Without planning permission, the change of use of the Land from use for the keeping of horses at livery to a mixed use for the keeping of horses at livery and the siting of a static caravan for residential purposes." and varied by altering the time for compliance to 6 months. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

B.S.Rogers

Inspector