



Appeal Decisions

Site visit made on 23 November 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal A Ref: APP/M2270/C/20/3246942

Appeal B Ref: APP/M2270/C/20/3246943

Land south of Oakland's Farm, Bodiam Road, Sandhurst, Kent TN18 5LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). Appeal A is made by Mr Karl Selby and appeal B is made by Mrs Samantha Selby against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 13 January 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from agriculture to a mixed use comprising agriculture and the stationing of a caravan for residential use and the siting of a storage container.
- The requirements of the notice are to:
 1. Cease the use of the Land for residential use.
 2. Cease the use of the Land for the stationing of a caravan for residential purposes
 3. Cease the use of the Land for the siting of a storage container.
 4. Permanently remove from the Land the caravan shown in its approximate location marked "A" on the accompanying plan.
 5. Permanently remove from the Land the storage container shown in its approximate location marked "B" on the accompanying plan.
 6. Remove all domestic paraphernalia associated with the unauthorised residential use from the land.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The Appeals on Ground (b)

1. The appeals on this ground are that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability.
2. The enforcement notice sets out that the land is in a mixed use for agriculture, the stationing of a caravan for residential use and the siting of a storage container. A caravan and a storage container are located on the site.
3. The appellants contend that the land is used for forestry rather than agriculture. It is a modest area of woodland containing a large pond and a clearing where the caravan and storage container are located. The surrounding area comprises fields in agricultural use, although there is a mobile home in a neighbouring field.
4. The definition of agriculture at Section 336 of the Town and Country Planning Act 1990 (the Act) includes woodlands where that use is ancillary to the farming

of land for other agricultural purposes. This is a small area of land within a predominantly agricultural area. It is within different ownership from the surrounding area. Nevertheless, it functions in the same way as woodland within an agricultural area and has the same physical relationship.

5. Given the size of the woodland, it is unlikely to be viable for forestry purposes. It needs maintaining and some timber may be removed from it from time to time. However, the extent of forestry operations are limited.
6. The appellants dispute that the caravan was used for residential purposes at the time the enforcement notice was issued. This ground of appeal is worded in the past tense, such that the residential use would not necessarily have to be occurring on the date the notice was issued. It is possible for the use to have occurred for a period prior to that date. The main issue, therefore, is whether the breach had occurred by the date of issue of the notice.
7. The caravan contains a living area with kitchen, two bedrooms and a bathroom such that it provides all the facilities for day to day living. During my site visit I noted that it appeared to have been residentially occupied. Residential occupation, whether permanent or for shorter periods, is the normal purpose of a caravan, albeit I accept they can be used for other purposes such as welfare facilities. I understand that one or both of the appellants applied to be put on the electoral roll at an address that appears to be that of the site in July and October 2019. The appellants state that this was to provide a postal address for deliveries. However, the Council suggest this shows they were living at the site on those dates and I consider this to be a more plausible explanation. The landlord of a previous address stated they had vacated that property in June 2018. I note that the appellants requested correspondence be sent to their home address in April 2019, although no address appears to have been given.
8. The appellants state that they have been living in caravans and moving between camp sites in England and Europe. There is limited information as to where they have stayed and limited supporting evidence has been provided. They indicate that the caravan on the site is unfit for family residential occupation, although the reason for that is unclear. They accept they were resident in a touring caravan on the site when camp sites were shut due to restrictions relating to the coronavirus pandemic, but this was after the enforcement notice was issued.
9. My decision needs to be taken on the balance of probability and having taken into account all the submitted evidence. On that basis, I consider that the appellants had occupied the caravan residentially by the date of issue of the enforcement notice.
10. My attention has been drawn to the case of *Wealden District Council v Secretary of State for the Environment & Day* [1988] JPL 268. This related to the stationing of a caravan, which is not a material change of use of itself, it is also necessary to identify the purpose for which the caravan is sited. In this case, the Council have specified that use to be residential. Whether that is an incidental use to the main lawful use of the land in this instance is better considered under the ground (c) appeals.
11. Fish are kept in the pond and the keeping or breeding of fish could be an agricultural use of the land. Anglers are able to visit to fish, although I

understand this use did not commence until after the enforcement notice was issued. There is no reference to the fish within the enforcement notice.

12. Taking account of the above, I conclude that the matters described in the enforcement notice have occurred. Consequently, I conclude that the appeal under ground (b) should fail.

The Appeal on Ground (c)

13. The appeals on this ground are that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability.
14. The enforcement notice alleges a mixed use of the land for agriculture, the stationing of a caravan for residential use and the siting of a storage container. This ground of appeal relates to the caravan and storage container.
15. The container is a substantial structure that is held to the ground by its own weight. The appellants suggest that it would be difficult to remove from the site, which indicates that it has a substantial degree of permanence. However, I understand that it has been moved within site in the past, although it is not clear how that took place or what equipment was required to move it. Consequently, in terms of size, permanence and physical attachment and in accordance with well-established case law, on balance I conclude that the container should be considered a building.
16. The appellants suggest that using a building for agricultural or forestry purposes does not constitute development under Section 55 of the Act. However, I have concluded in the appeal under ground (b) that the land is not used for forestry purposes as suggested by the appellants. In any event, Section 55 of the Act provides that the carrying out of building or other operations in, on, over or under land constitutes development and this would include siting of the container.
17. There is no dispute that the stationing and residential occupation of the caravan constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for either the stationing and residential occupation of the caravan or siting of the container.
18. My attention has been drawn to the Town and Country Planning (General Permitted Development) Order 1995. However, that was withdrawn and replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Consequently, I have referred to the relevant provisions in that GPDO. The GPDO grants planning permission for defined forms of development subject of various conditions and limitations.
19. Class E, Part 6, Schedule 2 of the GPDO relates to development reasonably necessary for the purposes of forestry. This includes the erection of a building, in this case the siting of the storage container. However, this is subject of a prior notification procedure required to take place before its siting on the land, but that has not been followed in this case. Consequently, even if the land were used for forestry purposes the container cannot benefit from the planning permission granted by that Class.

20. The appellants suggest that the caravan had not been located on the site for a period of more than 28 days on the date the enforcement notice was issued. It is suggested that it may have been permitted under Class B, Part 2, Schedule 2 of the GPDO on that basis. However, I note that the caravan was not removed after those 28 days and remained on the site on the date of my visit. It does not, therefore, comprise permitted development under that Class.
21. Class A, Part 5, Schedule 2 of the GPDO enables provision of a caravan in the circumstances listed in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites Act 1960 (CSA), subject to a condition that the use is discontinued when those circumstances cease to exist, and all caravans on the site are removed as soon as reasonably practicable. Paragraph 8 of Schedule 1 of the CSA relates to the use of land as a caravan site for accommodation during a particular season of a person or persons employed on land in the same occupation, being land used for the purposes of forestry. This effectively enables the use of a caravan for residential purposes incidental to the main lawful use of the land. As I have concluded the land is not used for the purposes of forestry, it cannot benefit from this provision. In any event, the caravan appears to have been stationed on the site and used residentially for longer than any annual period during which forestry works would have taken place on the land.
22. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the stationing of a caravan for residential use and the siting of a storage container comprise development for which planning permission is required. Since no planning permission has been granted for the development, it thereby constitutes a breach of planning control.
23. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

24. The appeals under this ground are that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability.
25. The appellants do not suggest that the elements of the mixed use, predominantly the stationing of the caravan for residential use, have become lawful through the passage of time.
26. They suggest that a storage container has been kept on the land since 1998. As I have concluded that the container comprises a building in planning terms, it would become lawful were it to have been substantially completed for a period of four years beginning with the date on which the operations were substantially completed. Those operations would not be complete until the container was moved into its position at the time the notice was issued. The enforcement notice was issued on 13 January 2020.
27. I understand that the appellants have moved the container on the site since purchasing the property. It is unclear when the container was moved or the date of purchase, but they state that there is a photograph of the container in its previous position dated December 2016. That is less than four years before the date of issue of the enforcement notice. Consequently, the container cannot

have been in its position when the enforcement notice was issued for a period of four years beginning with the date it was moved.

28. In addition, I note that the Council state that a site visit on 25 April 2018 did not show a container on the land and they first saw the container on a site visit of 29 May 2018.

29. For these reasons, on the balance of probability I conclude that, at the date when the notice was issued, enforcement action could be taken in respect of the breach of planning control constituted by the material change of use to a mixed use comprising agriculture and the stationing of a caravan for residential use and the siting of a storage container. The appeal under ground (d) therefore fails.

The Appeal on Ground (f)

30. The appeals on this ground are 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to discontinue the unauthorised use of the land and remove the caravan, storage container and domestic paraphernalia. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

31. The requirements of the enforcement notice include ceasing the use of the land for the siting of a storage container. As I have concluded that the storage container is a building, its location on the site is not a use of land. Consequently, this requirement is unnecessary and should be removed. I note that the storage container is required to be removed by another requirement.

32. The other requirements seek to remedy the breach of planning control. I understand that storage and welfare facilities may be required whilst work is taking place to the trees on the land. However, this is a small area of woodland. The facilities required to be removed are more than is necessary for maintenance of this land. I note that the appellants have access to woodland elsewhere that they manage, but it is unclear how the storage in this location relates to that work. The appellants would know what would comprise domestic paraphernalia, so the enforcement notice is sufficiently clear in this regard. Allowing the caravan, container or domestic paraphernalia to remain would not fully remedy the breach of planning control.

33. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control, except in relation to reference to ceasing the use of the land for the siting of a storage container. As such, the appeal succeeds on ground (f) to that extent and I will vary to the notice to remove reference to ceasing that use.

The Appeal on Ground (g)

34. The appeals on this ground are that the period specified in the notice for compliance falls short of what should reasonably be allowed. The enforcement notice requires compliance within three months but the appellants have requested a longer period to enable any works to take place over the summer months.

35. The Council suggest that a period of six months would be satisfactory to enable the container to be removed from the site. I see no reason to disagree with the Council's conclusions in this regard. They also indicate allowing until September 2020 for the caravan. As September will be approximately six months from the date of my decision, that would be a consistent period to comply with those requirements. Consequently, a period of six months would be reasonable in the circumstances.

36. For these reasons, I conclude that the period for compliance falls short of what should reasonably be required. As such, I conclude that the appeal under ground (g) should succeed and I will amend the notice to allow six months for compliance.

Formal Decisions

37. It is directed that the enforcement notice is varied by:

- The deletion of the words "3. Cease the use of the Land for the siting of the storage container" at section 5 What You Are Required To Do and renumber the following requirements accordingly.
- By the deletion of "Three (3) calendar months" and the substitution of "Six (6) months" as the period for compliance.

38. Subject to the variations, the appeals are dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR