Planning Inspectorate

Appeal Decisions

Site visit made on 4 February 2025

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal A Ref: APP/Z3825/X/24/3345651
Prestwood Corner, Prestwood Lane, Ifield, Horsham, West Sussex RH11 0LA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Sandra Stockbridge against the decision of Horsham District Council.
- The application ref DC/24/0164, dated 26 January 2024, was refused by notice dated 25 March 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is stationing of a minimum of 1 caravan to provide ancillary and mess room accommodation for more than 10 years.

Summary of Decision: The appeal is dismissed

Appeal B Ref: APP/Z3825/C/24/3353722
Land at Prestwood Corner, Prestwood Lane, Ifield, West Sussex RH11 0LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Sandra Rae against an enforcement notice issued by Horsham District Council.
- The notice was issued on 11 September 2024.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from agricultural use to a mixed use of agricultural and residential, by way of the stationing of a mobile home for the purposes of human habitation, as show in the approximate position hatched orange on the attached plan. Together with the associated operational development comprising the installation of a septic tank in the approximate position shown as a brown spot within the hatched blue area (the hardstanding) and the calor gas tank in the approximate position shown as a brown spot on the attached plan.
- The requirements of the notice are to:
  (1) Permanently cease the use of the Land for the stationing of a mobile home in the approximate position shown hatched orange on the attached plan;
  (2) Remove the mobile home referred to in (1) above, from the Land;
  (3) Break up and remove from the Land the hardstanding in the approximate position shown hatched blue on the attached plan;
  (4) Remove from the Land the calor gas tank in the approximate as shown as a brown spot on the attached plan, the septic tank in the approximate as shown as a brown spot on the hardstanding, on the attached plan and the associated services, which are incidental to the unauthorised residential use of the Land as a caravan site; and
  (5) Following steps (3) and (4) above, restore the Land to its original condition before the breach took place by infilling the depression left by removing both the septic tank and the hardstanding with soil and sow with grass seed.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) of the Town and Country Planning Act 1990 (as amended). 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.

Summary of Decision: The enforcement notice is quashed.

Preliminary Matters

1. The appellant for Appeal A is Ms Sandra Stockbridge and for Appeal B is Ms Sandra Rae. The enforcement notice was served on Mrs Sandra Stockbridge and I am satisfied that they are the same person.

Appeal A

Main Issue

2. The appellant is seeking a certificate to confirm that the use of the land for the stationing of a minimum of one caravan to provide ancillary and mess accommodation was lawful on the date of the application. The Council refused the application on the grounds that it had not been demonstrated that the caravans had been stationed on the land and used for ancillary purposes for a period in excess of 10 years from the date the application was submitted.

3. The Planning Practice Guidance[1] on lawful development certificates makes it clear that the applicant is responsible for providing sufficient information to support an application. In the case of an application for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

4. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The appellant must show, on the balance of probability, that the development was lawful at the date of the application. The main issue is therefore whether the Council's decision was well-founded.

Reasons

5. The stationing of a caravan may be ancillary to the use of the land and may not therefore constitute a change of use of the land. To assess whether a change of use has taken place through the stationing of a caravan, it is necessary to identify the planning unit, the primary use of the land, and whether the use of the caravan(s) is ancillary or incidental to the primary use.

6. If the use is not ancillary or incidental the correct approach is to establish the lawful use of the planning unit, the effect of the caravan(s) and its use on the character of the lawful use, and whether there has been a material change of use. If there has been a change of use, the appellant would need to demonstrate that the use had been carried on for a continuous period of 10 years, prior to the date of the application. It is therefore necessary to establish the lawful use of the land, and the use of the caravan(s).

7. The appeal form states that the actual use of the site at the time of the application was agriculture. The appellant's planning statement describes the planning unit as

[1] Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014

an agricultural yard which is part of the wider fields within the same ownership with barns, agricultural plant and machinery.

8. As the appeals are linked it is relevant to have regard to evidence submitted in support of Appeal B. The appellant identifies that the planning unit includes uses for agriculture, equestrian (keeping of horses) and storage of shipping containers, as well as the residential uses which were the subject of the notice. I saw evidence of equestrian and residential uses on site. This contradicts the assertion that the land is purely in agricultural use and indicates a mixed use. There is insufficient evidence to discern the primary use of the land.

9. The appellant has not provided any detailed information as to the nature of the use of the caravans as 'ancillary and mess accommodation' in support of the LDC application and appeal. Furthermore, in the grounds of appeal for Appeal B it is stated that the appellant and Bill Rae have been living in the twin-unit mobile home to the north of the stables for the last three years, having moved out of their previous rented house offsite. This indicates that the twin-unit mobile home has been occupied as their sole residence. This would normally be a primary use, even if the occupation is associated with their use of the land. This contradicts the contention that the caravan(s) have been used for ancillary or mess accommodation.

10. In response to the Planning Contravention Notice and the Council's emailed note following the subsequent site meeting, it is stated that the mobile home/static caravan by the entrance gate has been occasionally used as residential accommodation by friends visiting the family. This further contradicts the contention that it has been used for ancillary or mess accommodation in association with an agricultural use.

11. On the basis of my observations on site and the very limited information provided with the appeal, I conclude that the appellant's evidence is contradictory and is not precise and unambiguous. Irrespective of the period of time that the caravan(s) have been stationed on the land, there is insufficient evidence to discern the primary use of the land or the use of the caravan(s). The evidence falls well short of discharging the burden of proof and I cannot conclude that the caravan(s) have been used as ancillary or mess accommodation. The appeal should not succeed.

Appeal A Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for stationing of a minimum of 1 caravan to provide ancillary and mess room accommodation for more than 10 years is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Appeal B

Matters concerning the notice

13. I have a duty to ensure that the notice is in order. I have powers to correct any defect, error or misdescription in the notice under section 176(1)(a) of the Act, if I am satisfied that it would not cause injustice to the appellant or the local planning authority.

14. The enforcement notice alleges a change of use from agricultural to a mixed use of agricultural and residential. I need to be sure that the allegation is an accurate depiction of the alleged breach of planning control. It is clear that the land is being used, amongst other things, for equestrian purposes. The grounds of appeal state that Bill is an agricultural contractor helping other farmers and landowners with his variety of agricultural equipment. It is therefore unclear whether the land is also being used as an agricultural contractor's yard or whether these activities are part of an agricultural use.

15. The red line plan attached to the enforcement notice covers land on which the caravans referred to in Appeal A are sited although the notice does not refer to them. For the reasons set out above, it is not clear whether all of the caravans were used for purposes incidental or ancillary to a primary use of the land, or whether they were in a primary residential use. In view of the lack of clarity I have insufficient information to derive a correct description of the actual use of the land or the material change of use, as the case may be.

16. Furthermore, the notice requires the use of the land for the stationing of a mobile home in the approximate position shown hatched orange on the plan attached to the notice, to cease and the mobile home to be removed. The reasons for issuing the notice indicate that the Council's intention was for the notice to attack the residential use, but there is no requirement in the notice for the residential use to cease. In addition, there is no requirement to remove from the land the mobile home that has been sited near the entrance to the site. Section 173(11) of the Act sets out that where an enforcement notice in respect of any breach of planning control could have required any activity to cease but does not do so, and all the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted in respect of development consisting of the carrying out of the activities.

17. If I were to uphold the notice, through the operation of section 173(11) planning permission would be treated as having been granted for the residential use. If I correct the requirements of the notice to require the residential use to cease it may affect the way the appellant presents their case and may give rise to other grounds of appeal.

18. I have insufficient evidence to derive a correct description of the breach of planning control and I cannot correct the requirements of the notice without causing injustice to the appellant.

Appeal B Conclusion

19. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (d) and (f) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

20. Should the Council wish to continue to pursue enforcement action, it may consider doing so by means of a replacement notice framed in the proper terms, having regard to the ‘second bite’ provisions of section 171B(4)(b).

N Thomas

INSPECTOR