The Planning Inspectorate

Appeal Decision

Site visit made on 3 November 2014

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2014

Appeal Ref: APP/X1118/C/14/2216619 Land at SS5037NW on the south side of Buttercombe Lane, Boode, Braunton, Devon EX33 2NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Stephen Upstone against an enforcement notice issued by North Devon District Council.
- The notice was issued on 5 March 2014.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, unauthorised material change of use of the Land under Section 171B(3) from agricultural use to residential use by virtue of the stationing and residential occupation of a mobile home (caravan) and the use of a wooden building as ancillary living accommodation on the Land.
- The requirements of the notice are: (1) cease the residential occupation of the land shown edged red on the enclosed Location Plan; (2) remove the caravan from the land edged red on the enclosed Location Plan; (3) remove all domestic paraphernalia associated with the use of the building as ancillary living accommodation from the land edged red on the enclosed Location Plan; (4) remove all debris and other rubbish resulting from complying with steps 2 and 3 above from the land edged red on the enclosed Location Plan.
- The period for compliance with these requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Act.

Formal Decision

1. The enforcement notice is corrected by:
   i) the deletion from paragraph 3 of the enforcement notice of the words: *"stationing and"* and *"mobile home"* and the brackets around *"caravan"*, so that it says: *"Without planning permission and within the last 10 years, unauthorised material change of use of the Land under Section 171B (3) from agricultural use to residential use by virtue of the residential occupation of a caravan and the use of a wooden building as ancillary living accommodation on the Land"*.

2. The enforcement notice is varied by:
   i) the deletion of requirement 2 in paragraph 6 of the enforcement notice, together with consequential changes, so that it says: *"(1) cease the residential occupation of the land shown edged red on the enclosed Location Plan; (2) remove all domestic paraphernalia from the land edged red on the enclosed Location Plan; (3) remove all debris and other rubbish resulting from complying with step 2 above from the land edged red on the enclosed Location Plan"*.

3. Subject to this correction and this variation the appeal is dismissed and the notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

4. The site visit was brought forward at the Appellant's request. The Planning Inspectorate wrote to the parties with regard to the claim that Policy ECN10 was not relevant to the ground (a) that has been advanced. I have taken account of the comments made by both main parties in reaching my decision.

Ground (d)

5. Under this ground of appeal the onus of proof falls on the Appellant to show that: "…*at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice*" [as per section (d) of the appeal form]. The relevant date for this purpose is 10-years before the date of issue of the notice, i.e. 5 March 2004, hereinafter "*the material date*".

6. The grounds of appeal make clear that the: "…*lawfulness sought in the appeal is for the stationing of the caravan…*". The Appellant's statement confirms: "*The Appellant has not challenged the decision of the Council to disallow the residential occupation of the caravan and does not in this appeal seek to appeal on ground (d) to claim its residential use as alleged in the notice*".

7. I set this out in full because it is plain that this has not always been the Appellant's position. Amongst other things I note that an application for a Lawful Development Certificate [LDC] was submitted in September 2011 but refused, under reference No 52821, on 17 September 2012. The documents that were before the Council when it reached that decision have been placed before me but in view of the Appellant's clearly stated position, recited above, I see no point in a forensic review of those documents save for the following.

8. The Council has provided a statutory declaration from Geraldine Benjey who says that she owned the land for approximately 20 years until 2006, which is plainly long after the material date. She has sworn that during her ownership she and her husband did not live or, as far as she can recall, stay in the mobile home. That appears to be conclusive and so I can understand why the Appellant does not seek to contest that evidence. However her declaration does say that a mobile home was placed on the land shortly after buying the land which, in context, can only be taken to mean before the material date. It is clear from the declaration that the mobile home was thereafter retained.

9. The Appellant's statutory declaration reveals that his ownership commenced on 12 August 2009. Although he has had conversations with Michael and Jane Callaghan, who it is said owned the land between 2006 and 2009, he would not appear to have any personal knowledge of the site prior to his ownership. The letters that are attached to his statutory declaration are not themselves sworn, although they are exhibited to the declaration. I note from these letters that various claims are made as to the residential use of the mobile home prior to the material date but I attach limited weight to this correspondence and these claims in view of the fact that they are not, in themselves, sworn. Adopting the balance of probability it is clear that Mrs Benjey's version of events must be preferred. Nevertheless a fair reading of that correspondence confirms that the mobile home has been sited on the land prior to the material date. Amongst other things I note: (i) Mrs Purtell says that the mobile home was there before 2000; (ii) Mr Rodney-Jones confirms that the caravan has not been relocated

since its original siting; and (iii) Mr Patrick confirms it has stood in the same corner of the field for some 15 years, which would take me back to 1996[1].

10. At appeal stage the Appellant has produced screen grabs from Google Earth and it is claimed that these show the caravan in the same location in 2001, 2009 and 2010; the earliest is before the material date. However I attach this evidence very little weight. This sort of material is unreliable as to the date the photograph was actually taken, which can often be materially different to that suggested by this medium. I would expect what is known as a *Certificate of Authenticity* from the company that took the aerial photograph to be provided before I would attach this sort of evidence substantial weight. In the case of the image said to date from 2001 the companies concerned are Infoterra Ltd and Bluesky. No information from these companies has been provided to support the claimed date of 2001. My view in this matter is confirmed by the fact that the trees in the photograph are in full leaf and so, adopting a balance of probability, it is most unlikely to have been taken on "12/31/2001", which I take to be New Years Eve [top left sliding scale], or "1/1/2001" ["*Imagery date*", bottom right of photograph]. Indeed it is self-evident that both dates cannot be correct and so the evidence appears to be contradictory on its face.

11. Despite this reservation I accept, on the balance of probability, that the mobile home or caravan referred to in the allegation in the notice was stationed on the land before the material date. In reaching this view the statutory declaration of Mrs Benjey is in my view unambiguous and this evidence is confirmed by the other letters to which I have made reference. In the circumstances the ground (d) appeal will succeed to the limited extent on which it was advanced and I shall correct the notice to delete reference to the caravan in the allegation.

Ground (a): The deemed planning application

The planning policy context for the deemed application

12. The Development Plan [DP] includes the North Devon Local Plan 1995 to 2011 [LP], which was adopted in 2006. Relevant LP Policies cited on the face of the notice comprise HSG9, HSG9A, HSG10 and TRA1A. The Appellant has drawn my attention to LP Policy ECN12, together with Table 9A and paragraphs 8.42 and 8.57. I also sought the parties' views on the applicability of LP Policy ECN10. Applying the advice in paragraph 215 of the National Planning Policy Framework [the Framework] I attach these policies considerable weight.

Main issue

13. The deemed application arises from the allegation, as corrected, and hence it is necessary to rhetorically ask in the first instance whether this is an appropriate location for a permanent dwelling? However the Appellant's statement says: "*The Appellant fully accepts that the land is outside the settlement boundary and a dwelling would not ordinarily be acceptable in this location*". No case has therefore been made for a dwelling in this location, whether on a permanent or temporary basis, to meet the needs of farming, forestry or a rural enterprise. It must follow that the Council's claim, that the criteria set out in LP Policies HSG9, HSG9A and HSG10 are not met in this instance, is correct.

14. The Appellant's case is however advanced on the basis of seeking the caravan with a holiday occupancy condition. I see no bar to this case being advanced

[1] The letter is dated September 2011.

under the ground (a) head because it would still be a residential caravan, albeit with a condition restricting the type of occupancy. Accordingly the main issue in this appeal is whether this is a suitable location for a holiday caravan.

Reasons

15. The first criterion of LP Policy TRA1A relates to a development proposal that will (i) generate a significant amount of travel, but I find no basis to conclude that a single caravan would do so, or (ii) have an impact on the local highway network. I consider that even a holiday caravan would have some impact on the highway network, which is a very low policy test, as occupiers traverse back and forth and so this criterion is relevant on that basis. The policy says development will only be permitted if it will have good accessibility to a choice of transport modes including walking, cycling and public transport.

16. Table 3 of the LP defines desirable walking distances to include 200 m to a bus stop. It must be common ground that the appeal site does not meet this or any other target distance in the table. Although I would be prepared to accept the Appellant's contention that the appeal site is rather less than 2 miles from the centre of Braunton it is quite a climb via largely single track roads. My own experience, walking the route suggested by the Appellant, would suggest it is a good 20 minute walk in both directions. Cycling might be an option in leisure time, although the journey up would be fairly arduous. Whilst I have no reason to doubt that there is a good bus service between Braunton and Barnstaple, and there is some prospect of linked trips via the railway station in Barnstaple, I find no basis to conclude that the appeal site would enjoy <u>good</u> accessibility to a range of transport modes other than the private car. In the circumstances I find a conflict with LP Policy TRA1A, as is alleged on the face of the notice.

17. However I accept that this is not the end of the matter as the Appellant has drawn attention to various passages in the LP that deal with tourism. Paragraph 8.42 stresses its importance to the economy of the District and read together with Table 9A recent changes in the tourism industry include a move towards self-catering, countryside and off-season short break holidays. Policy ECN12 says tourist accommodation will be subject to a condition to ensure the accommodation is restricted to holiday use only where it is not suitable for permanent residential use. It is plain that such a condition would be required if it was acceptable for the caravan to be retained as holiday accommodation.

18. My reading of the LP is that such a condition only comes into play where it is a suitable form of tourist accommodation under the typology set out between paragraphs 8.44 and 8.56, inclusive. The bold title "*Occupancy Conditions*" follows on from a section under another bold title "*Tourist Accommodation*" and it is no coincidence that the former starts with the words "*Where tourist accommodation*…", which is a clear reference back to the previous section. So whilst the Appellant maintains that none of the policies, ENC8-ECN11, apply to the deemed application, it appears to me that in order to consider imposition of a holiday occupancy condition in the terms set out in the LP, it is necessary to establish that the proposal is an appropriate form of tourist accommodation. To be clear on this, if I take the Appellant's statement and additional comments on Policy ECN10 at face value I would conclude that the deemed application was not an acceptable form of tourist accommodation within the ambit of the LP. On this basis it would not be appropriate to grant planning permission unless other material considerations were advanced that indicated otherwise.

19. This rationale led me to seek comments from the parties on the applicability of Policy ECN10 which, amongst other things, relates to any new caravan site, as per the supporting text at paragraph 8.51. The Council said in its response that the policy was only applicable "*…to direct larger scale development than the provision of a single mobile home*", but there is nothing in the policy to support this claim and it is at odds with the clear wording of paragraph 8.51. Although I acknowledge that this is not a new caravan it has no lawful use for human habitation. Accordingly I consider it to be appropriate to assess it as a new caravan site. Relevant statute[2] defines a caravan site to be land on which a caravan is stationed for the purposes of human habitation. The rationale underpinning all forms of tourist accommodation in this section of the LP is their contribution to the economy and as I have already noted the Appellant has actually drawn attention to paragraph 8.42. In these circumstances I am unclear why the Appellant's additional comments seek to infer that Chapter 8, "*The Economy*", is not relevant to the deemed application as that is the policy basis on which his entire ground (a) argument is predicated. None of the other LP Policies appear to be relevant to the deemed application.

20. The second part of the policy appears to be of relevance to this proposal for a new caravan site. The first policy test, A), is that there is a proven need for increased capacity. The supporting text, at paragraph 8.51, sets out the approach to this test to be "*The provision of any new camping and caravan sites will only be permitted where there is a proven need based on inadequate provision in comparison to known demand*". No evidence has been advanced to show that this is the case and so I conclude that this test is not met.

21. The second test, B), is that the development does not harm the character of the surrounding area. My site inspection did not suggest that the vicinity of the appeal site is characterised by caravan sites and so in terms of use, distinct from appearance, the introduction of a caravan site in this part of the District would be without precedent. However I understand that the Council has permitted the re-use of a former reservoir as a dwelling to the north-east of the appeal site and so a residential use would not be uncharacteristic. Under this heading the fact that the caravan was pre-existing is plainly material. On balance I find that the development, namely the use of an existing caravan for holiday accommodation, would not harm the character of the surrounding area.

22. The third policy test, C), is that roads linking the development with the coast or high quality road network are adequate for the volume and type of traffic likely to be generated. The road that serves the site in both directions is narrow, single track and, in places towards Braunton, quite steep. I do have a concern about precedent because, cumulatively, multiple caravan sites of this or similar nature could have the potential to give rise to a level of traffic generation that was material. However I must focus on the specific proposal before me, particularly as no such argument has been advanced by the Highway Authority. On that narrow basis I find that there is no evidence to conclude that the road network is inadequate to cope with the volume and type of traffic likely to be generated by the use of this single existing caravan as holiday accommodation.

23. LP Policy ECN10 is clear that a proposal for a new caravan site will only be permitted where all 3 tests, A-C, are met; see "*and*" after B). In the absence

[2] See for example section 1(4) of the *Caravan Sites and Control of Development Act 1960*, which is then used in section 336(1) of the Act.

of any evidence of a proven need for a new caravan site I conclude that it has not been shown that the deemed application complies with LP Policy ECN10. Since it is not a form of tourist accommodation that falls within the ambit of the relevant LP policies it would not be appropriate to grant planning permission for a new caravan site on the appeal site. No planning conditions could address this problem. Although reliance is placed upon paragraph 28 of the Framework, this only gives support to *sustainable* forms of rural tourism [*my emphasis*]. The identified conflict with LP Policy TRA1A strongly supports a finding that the deemed application would not comprise a sustainable form of rural tourism.

24. I have considered whether there are any material considerations that outweigh the conflict with LP Policies, including TRA1A and ECN10, that I have identified. First, by reference to the case of *Welwyn Hatfield*, it is said the principles of fairness and good governance preclude enforcement action being taken. However I entirely reject this argument. A caravan is, by definition, not a building and nothing that I saw during my inspection would lead me to find that this caravan has been modified so as to result in a building. The quote from Lord Mance does not translate to the situation at issue in this appeal. Whilst there is a building on the site this is only used for ancillary purposes. There are many circumstances in which a caravan can be placed on land without giving rise to a material change of use, including the circumstances in which this particular caravan appears to have been used by Mrs Benjey. Using a caravan to have a cup of tea in between looking after ponies that are kept on the land appears to be a classic example of an ancillary activity in which the stationing of a caravan would not represent development under the Act. There is nothing before me to suggest that the building and caravan on the land could not be used for this or a similar activity in future and so I reject any inference that the enforcement action might render the land useless.

25. Second, whilst I have already taken account of the existence of the dwelling in the disused reservoir the date of that planning permission, 1992, suggests to me that the proposal would have been assessed against a materially different set of planning policies. Whilst the Bruntland Commission had already reported the translation of its findings into planning policy was far from instant such that it is unclear, on the limited information before me, whether sustainability was a key policy test against which that proposal would have been assessed. I have given reasons for finding that this is not a sustainable location for residential development, even as a form of rural tourism. This historic planning permission can therefore be clearly distinguished from the deemed planning application.

26. Third, the Appellant has offered what is tantamount to a personal condition, i.e. that use of the caravan be restricted to family and friends. However I have already found that no planning conditions could address the policy conflict and whilst I note the Appellant's personal links to the area this is not a case in which there would be individual hardship. There is no evidence that would lead me to find there is no suitable tourist accommodation available in the area.

27. On the main issue I conclude that this is not a suitable location for new forms of residential development, including use as a caravan site subject to a holiday occupancy condition. No material considerations have been advanced that outweigh the identified conflict with LP Policies, including TRA1A and ECN10.

28. For the reasons given, and having regard to all other matters raised, I conclude that ground (a) should fail.

Ground (f)

29. In my view it follows from the reasons given for success under ground (d) that it would be excessive to require the removal of the caravan. It was a feature of the site prior to the instigation of the material change in the use of the land to residential. I have given reasons for attaching weight to the statutory declaration of Mrs Benjey and this strongly supports the view that the caravan had been stationed on the land for more than 10-years at the point that the residential use commenced. It is one thing to require the removal of the vessel or development that facilitates a material change of use. That principle is well established in relevant case law. However that is not the position here because the vessel that facilitates the residential use, namely the caravan, was already long established as a feature of the site when that use commenced.

30. I find no inconsistency between this approach and the language of the Act. Section 173 (3) of the Act refers to the achievement, wholly or partly, of any of the purposes set out in section 173 (4) of the Act. Notwithstanding the "or" both within and after section 173 (4) (a) of the Act, it is possible for differing objectives to apply. In this case section 4 of the notice refers to remedying the whole breach and this language is only used in section 173 (4) (a) of the Act. However it is unclear precisely which objective the Council had in mind, i.e. whether discontinuing the use of the land or restoring the land to its condition before the breach. Requirements 1 and 3 appear to seek discontinuance of the use but insofar as requirement 2 might be said to seek to restore the land to its condition before the breach, the removal of the caravan would clearly be excessive. At the point when the residential use commenced, namely in or after 2006 when Mrs Benjey sold the land, the caravan was already present on the land. In other words the site had a caravan on it at the point at which the breach first took place and so the land's restoration to its condition without a caravan stationed upon it would be excessive.

31. In these circumstances I conclude that the second requirement is excessive. As such, this ground of appeal will succeed to the limited extent on which it was advanced and I shall vary the notice by deleting the second requirement and making consequential changes to the remainder. Apart from re-numbering the only point of any substance is that if the caravan is no longer required to be removed that any domestic paraphernalia should now be removed from the land rather than merely the building. In my view this is not making the notice more onerous because previously the third requirement would not have needed to say this if the caravan was removed. A requirement to remove all domestic paraphernalia from the land is wholly consistent with section 173 (4) (a) of the Act insofar as it refers to discontinuing the [unauthorised] use of the land.

Conclusion

32. For the reasons given, and having regard to all other matters raised, I conclude that, subject to limited success under grounds (d) and (f), the appeal should be dismissed and I shall uphold the corrected and varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

[redacted]

INSPECTOR