



## Appeal Decisions

Site visit made on 10 January 2020

by **Anthony J Wharton BArch RIBA RIAS MRTPI**

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

Decision date: 24 January 2020

**Appeal Refs: Appeal A - APP/J3720/C/19/3226443 and  
Appeal B - APP/J3720/C/19/3226444**

**Land opposite Butlers Road Farm, Butlers Road, Long Compton,  
Warwickshire CV36 5 JZ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Mary Bloxsome (Appeal A) and Ms J Bloxsome (Appeal B) against an enforcement notice issued by Stratford-on-Avon District Council (the LPA).
- The enforcement notice, numbered 16/00487/CARENF, was issued on 12 March 2019.
- The breach of planning control as alleged in the notice is: *'the change of use of the land from a mixed use of sheepdog training facility and agriculture to a mixed use of sheepdog training, agriculture and the use of the land for the stationing of a caravan/mobile home for residential purposes (the approximate location of the caravan is marked with an X on the Plan)'.*
- The requirements of the notice are as follows:
  - (a) *Remove the caravan/mobile home (in the approximate location marked with an X on the Plan) from the land.*
  - (b) *Cease the use of the land for the stationing of a caravan/mobile home for residential purposes.*
- The period for compliance with the requirements is *4 months*.
- Appeal A is proceeding on grounds (a), (b), (c), (d), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (b), (c), (d), (f) and (g). Since the prescribed fee has not been paid within the specified period, Appeal B on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

### Decisions

1. The appeals succeed to a limited degree on ground (f) only. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied. See formal decision.

### Matters of clarification

2. One enforcement notice was issued and there are two appeals made against it as outlined above. In Appeal A I have considered whether or not planning permission should be granted for what is alleged in the notice: that is, *'the change of use of the land from a mixed use of sheepdog training facility and agriculture to a mixed use of sheepdog training, agriculture and the use of the land for the stationing of a caravan - mobile home for residential purposes'*. In both appeals I have considered the other legal grounds; (b), (c) and (d) as well as grounds (f) and (g) in accordance with section 174(2). In the statement submitted on behalf of the appellants, Ms Mary Bloxsome is referred to as being the *'principal appellant'*.

### Background information and relevant policy

3. The appeal site lies to the east of Long Compton and is within the open countryside. It also lies within the Cotswold Area of Outstanding Natural Beauty (CAONB). The Council indicates that it is visible from nearby public footpaths and

during the course of my site visit the nearest footpath was pointed out to me. The appeal land (see location and enforcement notice plans) is accessed via a field gate from Butlers Road and is sub-divided by various fenced enclosures. On the area of land closest to the road there are two buildings. The first is a large modern framed farm building and the second is a timber stable. The remaining areas appear to be 'penned out' for grazing and this was confirmed by the LPA at the time of their visit.

4. The alleged breach of planning control was first brought to the attention of the Council on 7 July 2016. This complaint related to the fact that 3 caravans had been sited on the land. These comprised two touring caravans and the mobile home (or caravan) which is the subject of the notice. The two touring caravans were removed from the land during the course of the enforcement investigation. The mobile home has since been re-positioned and has been placed almost completely inside of the large authorised modern framed farm building on the land.

5. The Council considered it expedient to take enforcement action against the stationing of the mobile home and the notice was issued in accordance with the adopted Local Enforcement Plan (LEP). The Council indicates that a planning application for its retention was not requested due to the '*principle of development*'; that is, the residential use not being acceptable due to its unsustainability.

6. In section 2 of the Council's appeal statement ('*Background*') the only reference to the planning history of the site relates to a retrospective application which was granted on 16 November 2012 (12/00650/FUL), for '*the erection a building and change of use (COU) of the land to provide a mixed use of sheepdog training facility and associated office on first floor and agricultural storage use on the ground floor*'. This, therefore, appears to be the current lawful use of the appeal site and the large farm building is lawful. The part retrospective application included an office. The mobile home is connected to a sewage outlet and although electricity and water supplies are available the latter was not connected at the time of my visit.

7. It is indicated that Ms Mary Bloxsome runs an established business on the land comprising dog training, sheep farming and horse/cart training. The dog training is stated to be for both permanent dogs; those needed for working on site and for external dogs; those owned by clients who bring dogs to the site for training. During my site visit I noted, amongst other things, the dogs, several sheep and equipment and agricultural machinery relating to the authorised use.

8. The Council indicates that the site was visited on 13 July 2016 and that, at the time, the mobile home was in the process of being moved into the existing farm building on the land where it is still positioned. A Planning Contravention Notice (PCN) was issued on 2 May 2017 and it was indicated that the caravan had been brought on to the land in Autumn 2016 and had been occupied for residential purposes. However, it was stated on behalf of the appellant that the residential use of the caravan was ancillary to the lawful use of the site.

9. At the time of my visit I noted that the mobile home/caravan contained a living room area; kitchen area, a bedroom and a shower room/WC. However, it had clearly not been occupied for residential purposes for some time. The water supply was not connected; the oven did not have a connected gas supply; the fridge had clearly not been used and there were no obvious signs of any long term residential use. In the living area there was a caged area for dogs, as well as beds for dogs. The bedroom did not have a bed and, again, only dog beds were evident. Parts of the mobile home were used for storage of equipment which was clearly related to the lawful use.

10. Overall, from my inspection, I do not consider that it had been in permanent residential use for a considerable period. However, in the past the Council had been

advised that it was being used for overnight accommodation on a 'regular basis' and answers to the PCN also indicated that it had been used for residential purposes. This contradicts the principal appellant's Statutory Declaration. Thus although a permanent residential use was far from apparent at the time of my visit, I must deal with the appeal on the basis of what is alleged in the notice; what was noted by the LPA and the answers in the PCN. I consider that the evidence overall indicates that the residential use of the mobile home had, as a matter of fact and degree, been more than just for odd overnight stays.

#### *Relevant Policy*

11. Relevant development plan policies of the Stratford-on-Avon District Core Strategy (SDCS) are set out within the Council's appeal statement. The most relevant appear to be CS.1 (Sustainable Development); CS.5 (Landscape); CS.6 (Natural Environment); CS11 (CAONB); CS.15 (Distribution of Development); CS.16 (Housing Development) and AS.10 (Countryside and Villages). The most relevant policies within the Long Compton Neighbourhood Development Plan (2011-2031) are: H1 (Development Criteria); H3 (Not Greenfield); H6 (Environmental Sustainability); and E2 (Green Fingers – Visual Access to the Landscape). Sections of the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are also major material considerations. In particular the sections which seek to ensure effective enforcement.

#### **Appeals A and B on ground (b)**

12. To succeed on this ground the onus is on the appellants to categorically show that what is alleged in the notice has not occurred as a matter of fact. This is different to whether or not a contravention of planning control has occurred. The simple question relates to whether or not the mobile home was actually on the land at the time the notice was issued and has been used for residential purposes.

13. From my inspection, although currently not in residential use, it is evident from the submissions that the mobile home has been used on the site for residential purposes in the past. This is accepted on behalf of the appellants although it is argued that the use had been ancillary to the lawful use of the land and that the residential use is for occasional overnight stays. However, it follows that what is alleged, whether a contravention of planning controls or not has occurred as a matter of fact and the appeals must both fail on ground (b).

#### **Appeals A and B on ground (c)**

14. To be successful on this ground it must be shown that either there is a planning permission in place for the use of the land alleged to be being carried out, or that one is not required because, for example, the works constitute permitted development. The merits of the case do not fall to be considered under this ground. Again the onus is upon the appellant to shown that there has not been a breach of planning control.

15. It is again argued that the overnight residential use of the mobile home is a use ancillary to the authorised use of the land. It is argued, therefore, that the siting of the mobile home on the land does not constitute development. However, the Council's evidence is that the mobile home was being used for residential accommodation on a regular basis and at that time the mobile home was clearly capable of providing all of the facilities necessary for day to day living. It has been accepted by the appellant that it had been used for residential purposes even though at my site visit this was not the case.

16. Although there are some details of diary entries for two weeks (October 2018 and February 2019), there are no other detailed diaries or logs to indicate or prove that

the overnight stays were only 'occasional'. From my inspection and from all of the written submissions I can only conclude that, even though it is not being used currently as such, the mobile home had been used in the past for more regular residential use. There is no planning permission in place for this and there is insufficient evidence to indicate that the intensity of the use was ancillary to the authorised use. Such a use does not constitute permitted development and so I conclude that a contravention of planning control has occurred and the appeals also both fail on ground (c).

### **Appeals A and B on ground (d)**

17. In appealing on this ground and in order to be immune from enforcement action the onus is upon the appellants to show that what is alleged in the notice occurred 10 years prior to the issue of the notice and that the use has been continuous since that date for a full ten years. That would take the date back to 12 March 2009. PPG makes it clear that an appellant is responsible for providing sufficient evidence to substantiate their claim and that the evidence should be precise and unambiguous.

18. On behalf of the appellants it is argued that there has been a caravan in situ on the site for a period in excess of 10 years and that the Council has accepted that there had been an earlier siting of a caravan on the land. However, it is not being argued that the caravan has been in residential use for that period of time. Instead it is indicated that the residential use has only been 'occasional' in relation to the business and the welfare of animals. However, again there is no detailed evidence to support the claims made on behalf of the appellants.

19. From the submissions and my site inspection I do not consider, on the balance of probabilities, that the mobile home has been in continuous use on the site as either permanent or ancillary residential accommodation for a period of ten years from the date of the issue of the notice. Nor has it been demonstrated that the alleged change of use could not be enforced against. The appeals fail, therefore, on ground (d).

### **Appeal A on ground (a)**

20. The main issues are as follows:

- The effect of the residential use of the mobile home on the character and appearance of this part of the CAONB and
- Whether or not the use of the mobile home constitutes sustainable development having regard to the relevant development plan policies.

21. Having viewed the mobile home and the building from both near and distant viewpoints, I agree with the Council Officers that in its current position (mainly within the building), it is not visually harmful to this part of the open countryside or to the CAONB. On this first issue, therefore, I find in favour of the appellant.

22. However, on the second issue and on the basis that the mobile home had been used for residential purposes in the past, I agree with the LPA that such a use is not sustainable in this particular location. If allowed to remain as a permanent mobile home it would result in the creation of a new dwelling unit in an open and isolated part of the open countryside where there are no close services or facilities. Whilst acknowledging that the appellant already has to use a vehicle to access the site for the authorised use(s), a residential use in addition would result in more reliance on vehicles to provide the facilities for normal day to day living.

23. I also agree with the LPA that the principle of a residential use in this location is not supported by any of the development forms specifically outlined in policies CS.15 and AS.10 of the SDCS. In addition such a development would only be supported by

policy H3 of the LCNDP if there were exceptional reasons for a person to live permanently on the site, such as for agricultural workers accommodation. In this case the appellant has not provided evidence that she needs to live on the site permanently in relation to the current uses of the land. Although there is evidence to indicate occasional residential use of the mobile home, linked to the authorised uses of the land, this is not a justifiable reason to meet the requirements of the policy.

24. I agree with the LPA, therefore, that any separate residential use of the mobile home represents an unsustainable form of development which is contrary to policies CS.1, CS.15 and AS.10 of the adopted SDCS and the LCNDP. The other material considerations are not sufficient to indicate that the decision to allow a residential use should be made other than in accordance with the development plan. I do not consider, therefore, that planning permission should be granted for the change of use as alleged in the notice and Appeal A must fail on ground (a).

#### **Appeal A and B on ground (f)**

25. The appellants contend that the requirement to remove the mobile home from the land is unnecessary and excessive. On the other hand the Council is of the view that there are no alternative requirements which would be sufficient to remedy the breach of planning control identified. The breach is the unauthorised change of use which has clearly occurred and has involved the residential use of the mobile home on the land in the past.

26. However, as indicated above, from my inspection I do not consider that the mobile home can have been used recently other than in association with the authorised uses. During my visit it was evident that the appellant was no longer using the mobile home for residential purposes. In fact the current condition of the unit and its use for basically housing her dogs and equipment associated with the authorised use of the land made it more or less impossible for it to continue to be used as a permanent residential mobile home.

27. Taking into account the need to care for the dogs and sheep, particularly at lambing times, it would be reasonable to expect the appellant to have to spend the occasional night at the site as opposed to more regularly using it in the past as a residential unit. I agree therefore that in the current circumstances it would be excessive to require the removal of the unit from the site. I consider that in order to remedy the breach all that is required is for the appellant to cease the residential use of the mobile home.

28. The fact that the Council is of the view that the mobile home in its current location within the building is acceptable in terms of its effect on the character and appearance of the area, reinforces my view that it need not be removed. It is still essential however that the notice is upheld to ensure that its use residentially and independently is not continued.

29. I shall, therefore vary the notice accordingly to allow the retention of the unit on site whilst ensuring that the residential use ceases. For the avoidance of doubt, I consider that the occasional use of the unit as sleeping accommodation, in support of and ancillary to the authorised uses of the land, would be acceptable. The appeal succeeds therefore to a limited degree on ground (f).

#### **Appeals A and B on ground (g)**

30. In the light of my conclusions on the other grounds as set out above and in the particular circumstances of these appeals, I consider that a compliance period of 4 months is more than adequate and the appeals on this ground therefore fail.

### **Other Matters**

31. In reaching my conclusions I have taken into account all of the other submissions made by the main parties and by Long Compton Parish Council. These include the full planning history of the site; the initial appeal submissions; the detailed statements and the final submissions and rebuttal and the Statutory Declaration. However, none of these carries sufficient weight to alter any of my conclusions on the grounds pleaded and nor is any other factor of such significance so as to change my decision that the enforcement notice should be upheld as varied.

### **Formal Decisions**

32. The appeals succeed to a limited extent on ground (f) only. I direct that the notice be varied by deleting in full the requirements set out in Sections 5a) and 5b) -WHAT YOU ARE REQUIRED TO DO - and by substituting therefor the following requirements:

- 5 a) Cease the use of the mobile home/caravan on the land for residential purposes.
- 5 b) Retain the mobile home/caravan in its current position within the authorised framed building on the land.
- 5 c) Remove the mobile home from the land if it is moved to any other part of the land, other than its existing position within the framed building.

33. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

*Anthony J Wharton*

Inspector