



Appeal Decisions

Site visit made on 29 January 2018

by **K R Seward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 01 February 2018

Appeal Refs: APP/V2255/C/17/3167184 & 3167185

Amos Field, Denstroude Lane, Dunkirk, Faversham, Kent CT2 9LA

- 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 Miss Philippa Watts (Appeal A) and Mr Sam Burch (Appeal B) against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 16 December 2016.
- 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 the use of the land for agriculture and as a caravan site for the stationing of a mobile home for storage or for the mobile home to be used residentially, including the laying of hard-surfacing specifically to facilitate this use and not for any agricultural activity occurring on the land.
- The requirements of the notice are:
 - (i) Cease the use of any part of the Land as a caravan site;
 - (ii) Remove any caravans/mobile homes from the Land;
 - (iii) Remove any hard-surfacing material from the Land used specifically to facilitate the unauthorized stationing of any caravan or mobile home.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are allowed, and the enforcement notice is quashed.

Preliminary Matters

1. The postcode for the appeal site was given incorrectly in the enforcement notice as 'CT5 9LA'. As an appeal has been made, the appellants clearly received the notice. It will not have been invalidated due to this error. I have utilised the correct postcode above.
2. The mobile home is solely in residential use and so it is incorrect for the enforcement notice to allege any storage use of it. Therefore, the reference to storage should be deleted from the allegation. This can be done without injustice to either party.
3. The appeals proceed on ground (c) only. As one of the legal grounds of appeal, my decision rests on the application of the law to the facts. Issues concerning other matters such as alleged damage to the highway can have no bearing on my decision.

Background

4. On 6 June 2012, planning permission was granted pursuant to planning

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ref: SW/11/0574 for the erection of an agricultural barn on the appeal site, being land known as 'Amos Field'. Subsequently, an application was made on 5 February 2013 to the local planning authority for a Lawful Development Certificate ("LDC") for the proposed siting of a static caravan on land at Amos Field for occupation by a person working on the barn's construction.

5. A LDC was granted on appeal¹ on 13 December 2013 for "the siting of a static caravan for the duration of implementing planning permission SW/11/0574". It was issued on the basis that the proposed use amounted to permitted development by virtue of the provisions of Article 3 and Class A of Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended, ("the GPDO").
6. That class permitted the use of land as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960. Those circumstances included (at paragraph 9) caravans used on-site, or on adjoining land, for the accommodation of workers employed in carrying out building or engineering operations for which planning permission has been granted, if required. A condition of Class A is that the use is discontinued when the circumstances specified cease to exist and all caravans on the site are removed as soon as reasonably practicable.
7. Construction of a barn commenced and a static caravan was brought onto the land. Development progressed slowly. After an unsuccessful planning application to convert the barn to a residential dwelling, the land was sold in 2016 to the appellants who continued with the construction of the incomplete barn. A replacement mobile home has been brought onto the land in reliance of the LDC. The enforcement notice seeks cessation of the use as a caravan site and removal of the caravan/mobile home.
8. I understand that the mobile home had been placed near to the site entrance. It is now positioned parallel with the barn, but remains within the red line shown on the enforcement notice plan.
9. Since the issue of the LDC, the GPDO has been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015. However, it was the 1995 GPDO that was in force when the use began and there is no evidence of a material break in use before the new mobile home was brought onto the land. The 1995 GPDO therefore remains applicable. In any event, the conditions and limitations of both Orders are the same.

Reasons

10. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The issue in contention is whether the use of the land for the stationing of the mobile home amounts to permitted development.
11. It is the Council's contention that the barn under construction does not accord with the amended approved plan. As such, it is maintained that the 2012 planning permission has not been implemented. In other words, it is the Council's case that the barn as built does not have planning permission.

¹ Appeal Ref: APP/V2255/X/13/2197154

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12. Permitted development rights relate only to lawful development (Article 3(5) of the GPDO). Even though an LDC has been granted, it is of no benefit to the appellants if it is not planning permission SW/11/0574 that is being implemented.
13. When planning permission was granted for the agricultural barn no condition was imposed to require the development to be carried out strictly in compliance with the approved plans. However, the decision notice made express reference to the "drawings received 31 May 2012". That being so, I consider drawing no 1683/03/B which is produced as the approved plan and is stamped with that date is incorporated within the permission.
14. The Council points to several differences between the barn under construction and the approved drawing, namely: increased height of the plinth, an additional door opening, creation of a first floor including staircase, installation of hard surfaced flooring and window openings in the gable ends which do not accord with the position of the louvres in the approved building.
15. The point in issue is whether there has been a material departure from the approved plan for the 2012 permission resulting in the development having been built in breach of planning control. If so, the use of the mobile home for residential purposes will not be permitted development pursuant to Class A of Part 5. Nor could it be used for other ancillary purposes because the provision on land of moveable structures required temporarily in connection with and for the duration of operations being carried out on the land under Class A of Part 4 of Schedule 2 of the GPDO also depends on the lawfulness of the development.
16. The Council acknowledges that the barn has been built in the location identified in the approved plans. The appellants contest the Parish Council's suggestion that the barn exceeds 8m in height being 1m or so higher than that approved. This conclusion was reached from scaling photographs which is not reliable. In an email exchange with the first appellant the Council indicated the ridge height exceeds that shown in the plans by around 0.5m, but it has not pursued the point in this appeal. That being so, I have no reason to believe that the height remains a concern.
17. By the time of my site visit work was still in progress and there were some notable changes since the Council issued the enforcement notice. The additional door opening had been bricked up. Instead of windows, there was a small louvre vent in each gable end, which appeared to correspond with the size and style shown in the approved drawing albeit at a different height.
18. The appellants submit that the drawings show only the visible height of the plinth and this will be in accordance with the plans once completed. I saw on site that horizontal timber cladding was in the process of being affixed to some parts of the building which had reduced the extent of visible brick plinth. It is likely to be reduced further once the adjacent land is brought up to finished ground level.
19. Externally, the building works undertaken thus far appear to correspond largely with the approved plan. Where there are deviations they appear to be minor in terms of their nature and impact on the appearance of the barn. The appellants are clearly still working on it to bring the barn back in line with the planning permission. The approved plan does not give any indication of what the flooring would be formed. It must have been anticipated that there would

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be some form of base. There is a single floor plan illustrating three bays. Wooden steps have been built in the centre bay leading to a partially built second floor. Whether or not the works undertaken internally need planning permission is not a matter before me. They do not affect the external appearance and I note that no condition was imposed to restrict the works going on inside.

20. I conclude that the works for the construction of the barn are those for which planning permission was granted by the Council pursuant to planning ref: SW/11/0574. Even though works may have been slow, the barn is not complete. The appellants claim to be occupying the mobile home whilst engaged in building operations in furtherance of the grant of planning permission. There is no evidence to indicate to the contrary. It follows that the use of the land for the stationing of the mobile home amounts to permitted development under the provisions of Article 3 and Class A of Part 5 of Schedule 2 to the GPDO. Once the barn is finished, the appellants will need to remove the mobile home as required by condition A.1. of Class A.
21. Accordingly, the matters alleged in the notice do not constitute a breach of planning control. The appeals on ground (c) succeed.

Formal Decisions

Appeals A and B

22. It is directed that the enforcement notice be corrected by the deletion of the words "for storage or for the mobile home" in paragraph 3. Subject to this correction the appeals are allowed and the enforcement notice is quashed.

KR Seward

INSPECTOR