



Appeal Decision

Site visit made on 4 August 2020

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/V2255/C/19/3243932

Land adjacent to Hurst Cottage, Hickmans Green, Boughton Under Blean, Faversham, Kent ME13 9NT

- 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 Mr Tony Godden against an enforcement notice issued by Swale Borough Council.
 - The enforcement notice was issued on 29 November 2019.
 - 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 land used for the stationing caravan/mobile home for residential purposes.
 - The requirements of the notice are:
 - (i) Cease the residential use of the land.
 - (ii) Cease the use of any part of the land for the stationing of mobile homes or caravans for residential use.
 - (ii) Remove all mobile homes and caravans 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) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - Deleting (ii) and substituting with (iii) for the third requirement of the notice.
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. The enforcement notice listed the third requirement as number (ii) instead of number (iii). This appears to be an error. My understanding of the notice is not affected by this error and nothing within the appellant's submissions indicates to me that it has been misunderstood by them. Therefore, I consider that a minor correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

Grounds (b) and (c)

4. To succeed the appellant would have to demonstrate, on the balance of probabilities, that (b) the matters that led to the service of the notice have not occurred, as a matter of fact, and (c) that if they did, they did not result in a

breach of planning control (c). The burden of proof lies with the appellant, and the test of evidence is on the balance of probabilities.

5. The evidence demonstrates that a caravan was on the site in the period leading to the serving of the enforcement notice, and it was still present at the time of my site visit. The Council's officer has observed the caravan on the site on several occasions between June 2019 and July 2020, with signs of a residential use, including a washing line with washing hung on it, flowerpots, steps to the caravan and a water tank situated adjacent to the caravan.
6. The appellant asserts that the caravan has never been occupied and has not been used for a residential purpose. The water tank is not plumbed into the caravan, and is not being used for residential purposes in the caravan. The caravan has not been occupied by any person or used as temporary living or sleeping accommodation. However, the appellant has provided no specific evidence to substantiate his assertion that it was not being used for residential purposes, and has not discharged the burden of proof to demonstrate that the caravan has not been in residential use.
7. The stationing of a caravan or mobile home may be ancillary to agricultural or other uses of the land, and this is argued by the appellant who claims that the caravan has been used in association with the clearing of the land. He also claims that the land is within the curtilage of the dwelling at Hurst Cottage.
8. The starting point is to identify the planning unit and the use to which it is being put. The appeal site is a narrow strip of land lying between Horseless Road and an open field. The evidence shows that prior to the clearance works it was an area of unmanaged scrub or woodland. The appellant states that the land has been used by his family for the storage of farming equipment, building materials and treated as one plot with Hurst Cottage. The dwelling lies adjacent to the site, but has its own residential curtilage. The site is physically separated from Hurst Cottage by a ditch and there is no physical access between the two parcels of land except via the road. The land is physically and functionally separate from the residential curtilage of Hurst Cottage.
9. The appellant has provided an official copy of the register of title for title number K778398 which indicates that 'Land adjoining Hurst Cottage, ...' was purchased by him on 22 February 2019. The land in question is not identified on a title plan. The appellant states that he lives at the neighbouring property Woodgate Cottage and his family are the owners and occupiers of the neighbouring and adjoining Hurst Cottage and Oak Cottage. That the appellant's family owns the adjacent properties does not indicate that the appeal site is in the same ownership, nor that it is within the residential curtilage of the neighbouring property. On the basis of the evidence before me, I conclude that the appeal site is a separate planning unit, and is not part of the residential curtilage of Hurst Cottage.
10. The evidence points towards the planning unit being the extent of the appeal site, with no specific use other than being part of a strip of woodland between Horseless Road and the adjacent field, which has now been largely cleared.
11. The appellant argues that the caravan was facilitating works in relation to the trees and the clearance of rubbish from the site. However, this claim is contradicted by the photographs provided by the Council and the evidence of the Parish Council. The photographs show that in April 2019 the site had been

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cleared of scrub and trees had been felled, leaving a number of tree stumps. An access from the road had been formed and an area of hard surfacing was in place. Photographs from June 2019 indicate a larger area of hardstanding, further levelling towards the rear of the site, with a caravan stationed on the more recently levelled and surfaced area. The photographs taken in July 2019 show the addition of the washing line hung with washing and the water tank, steps and flowerpots. In June 2020 the steps and water tank were still in place.

12. It is clear therefore that the works to the woodland, the clearance of rubbish and rubble took place prior to the caravan being stationed on the site. The evidence points towards these being preparatory works to allow the caravan to be brought onto the site. The appellant's clearly incorrect version of events regarding the timing and purpose of bringing the caravan onto the site undermines his case. There is no evidence of the use of the caravan being ancillary to any ongoing agricultural or woodland management use being carried out on the planning unit. Nor have I seen any evidence that the suggested use of the caravan in relation to cherry farming relates to any agricultural activity being carried out on an agricultural holding which includes the appeal site.
13. The evidence does not demonstrate that the use of the caravan for residential purposes is ancillary to any existing use on the planning unit. Even if the caravan were simply being stored on the site, the appellant has not shown that this is ancillary to any lawful use of the land.
14. On the balance of probabilities, I am satisfied that a material change of use of the land for the stationing of a caravan/mobile home for residential purposes has occurred, and that this is a breach of planning control. The appeals on grounds (b) and (c) therefore fail.

N Thomas

INSPECTOR