

S.8



## Appeal Decision

Site visit made on 22 September 2014

by **Sandra Prail MBA, LLB (Hons), Solicitor (non practising)**

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

Decision date: 28 October 2014

**Appeal Ref: APP/V2255/C/14/2213180**

**Warren Farm, Warden Road, Eastchurch, Sheppey, Kent, ME12 4HD.**

- 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 Michael J. Webb against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 14 January 2014.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to land used as a caravan site for the stationing of a caravan used for residential purposes and land used for the keeping of animals not associated with any agricultural activity, and the erection/stationing of building/field shelters etc used to facilitate the housing of such animals.
- The requirements of the notice are to (i) cease the use of any part of the land as a caravan site for the stationing of any mobile homes or caravans, or for the keeping of animals not associated with any agricultural activity, (ii) remove any caravans/mobile homes from the land; (iii) remove any animals not associated with any agricultural activity on the land; (iv) remove any structures, buildings, field shelters, stables, fencing, materials and equipment brought on to or erected on the site including any works undertaken in connection with the use of the site for stationing of caravans or mobile homes or for the keeping of animals not associated with any agricultural activity on the land.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Decision: the appeal is dismissed and the enforcement notice is upheld with correction.**

### Preliminary Matters

1. An enforcement notice should be clear and precise in describing the alleged breach which should be consistent with the requirements. The use of 'etc' in paragraph 3 of the notice creates uncertainty. The requirements at paragraph 5 set out a fuller description of the works being attacked by the notice and refer additionally to structures, stables, fencing, materials and equipment.
2. The alleged breach in paragraph 3 of the notice refers to use as a caravan site for the stationing of a caravan used for residential purposes. The allegation and requirements are not consistent as the requirements additionally refer to mobile homes as well as caravans. Furthermore, an enforcement notice must not prohibit other lawful uses. In this case the requirement to remove any caravans/mobile homes would prevent their lawful use for purposes ancillary to the primary use of the land. Similarly, the words 'including any works' in the

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final step of paragraph 5 suggest that the requirement to remove works extends beyond the unauthorised uses and prevents potentially lawful use. There is also a typographic error in the numbering at paragraph 5 of the notice in that it repeats (iii) instead of categorising the final requirement as (iv).

3. It is clear to me that the parties understand that the notice seeks to attack non agricultural use of the site including residential use of a caravan. Therefore no injustice would be caused to either party by the correction of the notice to address the points raised above.
4. Although ground (b) was not included in the appeal form, some of the Appellant's arguments are best placed under this heading. I will deal with them in this context.

#### **The hidden ground (b)**

5. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act and includes the material change of use of land.
6. The Appellant argues that the animals on site are mainly livestock for agricultural purposes and that all buildings and works on the site facilitate that use (except the caravan which has been used for residential purposes). His claim is that as a matter of fact the alleged breach (concerning the keeping of animals not associated with any agricultural activity and the erection of works to facilitate the housing of such animals) has not occurred because there has been no material change in the use of the land from agricultural use. This is more appropriately considered as a ground (b) appeal.
7. It is firstly necessary to ascertain the correct planning unit and the present and previous primary uses of the land.
8. The land edged red on the plan attached to the notice is distinct and separate from neighbouring land and occupied by the Appellant. I find that it constitutes a separate planning unit because of its physical and functional separation.
9. It is not in dispute that the lawful primary use of the site is agriculture. The definition of agriculture in section 336 of the 1990 Act as amended includes the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins, fur or for the purpose of the farming of the land) and the use of land as grazing land.
10. I saw on my site visit that the Appellant keeps a variety of animals on site including a pony, a few pigs, goats, geese, chickens, cats, dogs, gerbils and ferrets. The Appellant says that pigs and goats are bred for sale, chickens, ducks and geese produce eggs for sale, turkeys are sold for Christmas and ponies are pets. There is no dispute between the parties that eggs from the chickens are offered for sale. But there is no evidence before me to support the assertion that the primary use of the land remains agriculture. The Appellant refers to a registration by Defra but there is no detail before me to take into account. The area on which the pony is enclosed is small and could not reasonably be considered grazing land. Whilst I recognise that the production of chicken eggs for sale may constitute agriculture the primary character, type and nature of use of the land appears on the evidence before me to comprise a recreational use of caring for a variety of animals, including domestic pets, as opposed to the keeping and breeding of livestock for any agricultural activity.

11. It follows that if the animals kept on site (with the exception of the chickens) are not associated with agricultural activity then the buildings in which they are housed cannot be to facilitate an agricultural use.
12. As a matter of fact and degree on the evidence before me I find on the balance of probabilities that a material change of use of the land the subject of the notice has occurred. Had there been an appeal under ground (b) it would have failed.

**Ground (f)**

13. The ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
14. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (section 173(4) (a)) is to remedy any breach of planning control which has occurred. The second (section 173(4) (b)) is to remedy any injury to amenity which has been caused by the breach.
15. Where the purpose is to remedy the breach, s173 (4) (a) states that this can be achieved by restoring the land to its condition before the breach took place. That is what is sought in the specified steps as corrected. The notice requires the cessation of the unauthorised uses and the removal of works associated with that use. The purpose of the notice is thus to remedy the breach of planning control that has occurred and no lesser steps than those specified would achieve that purpose.
16. The Appellant makes two points under this ground of appeal. The first concerns whether the use of land and buildings is agricultural. I have addressed this under ground (b) above and as the requirements of the notice explicitly permit the keeping of animals associated with any agricultural activity and the erection of works to facilitate the housing of such animals any genuine agricultural activity is not prejudiced by upholding the notice. The second is an offer that he will move the caravan from the edge of the road to the centre of the site and not use it for residential purposes.
17. Whilst I acknowledge that relocation to the centre of the site would be less conspicuous than its current location I am not satisfied that it would eliminate harm to the character and appearance of the surrounding countryside and the scenic quality of the coastal zone. The Appellant does not specify the proposed use of the caravan and it follows from my earlier conclusions that it is not necessary for agricultural use of the land. There is therefore no obvious alternative lesser step before me that would fulfil either purpose set out in section 173 of the Act.
18. For the reasons given above I conclude that the appeal on ground (f) fails.

**Ground (g)**

19. This ground of appeal is that the time to comply with the notice is unreasonably short.
20. The Appellant states that twelve months would be a reasonable period for compliance. But twelve months is the period for compliance specified in the

notice. There is therefore no issue between the parties concerning the time to comply with the notice.

21. Nevertheless as the notice attacks a residential use the rights of the Appellant and family members under the Human Rights Act 1998 must be taken into account. Interference with the way the Appellant uses his property must be proportionate taking into account the conflicting considerations of private and public interest. I consider a period of twelve months to be a reasonable time in which to expect the requirements to be undertaken. It would strike an appropriate balance between competing private and public interests and be proportionate so as not to violate individual rights.
22. Consequently, the appeal on ground (g) fails.

#### **Other matters**

23. The Appellant refers to potential development of neighbouring sites and argues that he has been singled out by the Council. The circumstances of the other sites are not before me and I have determined this appeal on its own merits.
24. Representations from local people raise concerns about land ownership and the accuracy of the plan attached to the enforcement notice. The purpose of the plan is to provide a sensible indication of the land. I consider that it achieves this. Land ownership is a civil matter and does not fall within the remit of this appeal.

#### **Formal Decision**

25. The enforcement notice is corrected by the following amendments:

In paragraph 3 of the notice add the words 'mobile home' after the words 'stationing of a caravan' and add the words 'structures, stables, fencing, material and equipment' in substitution for 'etc';

In paragraph 5 (i) of the notice add the words 'for residential use' after the words 'or caravans';

In paragraph 5 (ii) add the words 'used for residential purposes' after the word 'homes'; and

In paragraph 5 renumber the final paragraph by the substitution of (iv) in place of (iii), delete the words 'including any works undertaken' and add the words 'for residential use' after the words 'mobile homes'.

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

*S. Prail*

**Inspector**