



Appeal Decision

Site visit made on 28 June 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27th July 2023

Appeal Ref: APP/V2255/C/23/3315214

Land adjacent to 241 Leysdown Road, Leysdown-on-Sea, Sheerness, Kent ME12 4AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Dobkin against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 15 December 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land for the stationing of a mobile home and a motor home for residential use together with the erection of fencing and hard surfacing in association with the unauthorised use.
- The requirements of the notice are
 1. Cease the residential use of the Land.
 2. Cease the residential use of the mobile homes shown in its approximate position marked "X" on the attached plan and the motor home shown in its approximate position marked "Y" on the attached plan.
 3. Permanently remove from the Land the mobile home and motor home shown in their approximate position marked "X" and "Y" on the attached plan.
 4. Permanently remove all fencing hard surfacing and domestic paraphernalia associated with the residential use of the Land.
 5. Remove from the Land all materials, rubbish, debris and waste arising out of steps 1 to 4 above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1.) Deleting the allegation in full and replacing it with "Without planning permission, the material change of use of the Land to a mixed use for agriculture and for the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use."
 - 2.) Deleting requirement 1 from the notice and replacing it with "1. Cease the mixed use of the Land for agriculture and the stationing of a mobile home and motor home for residential use."
 - 3.) Deleting the words "hard surfacing" from requirement 4.
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the

Appeal Decision APP/V2255/C/23/3315214

application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. The allegation and requirement No 4 refers to hard surfacing. As there is no hard surfacing which is associated with residential use, I can remove the references to hard surfacing. The allegation refers to the material change of use of the Land which is the land within the red line boundary which is a field. However, the residential use alleged is not taking place across all of the field. The use of the field as agricultural land including the grazing of horses continues and the allegation should therefore relate to a mixed use. I will therefore amend the allegation to 'Without planning permission, the material change of use of the Land to a mixed use for agriculture and for the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use.'
4. The requirements will then need to reflect the mixed use. Requirement 1 will be replaced with "Cease the mixed use of the Land for agriculture and the stationing of a mobile home and motor home for residential use." Requirements 2, 3, 4 and 5 remain unaltered apart from the deletion of hard surfacing in requirement 4. The variations do not widen the scope of the appeal. The cessation of the residential use will end the mixed use and allow reversion to agricultural use. I do not therefore consider that there is injustice to any party as a result of the amendments and I will amend the notice accordingly.

The appeal under ground (b)

5. This ground of appeal is that, as a matter of fact, the breach of planning control has not occurred. In order to succeed on ground (b), the appellant would need to show that the mixed use which includes the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use has not occurred. The burden of proof is on the appellant and the relevant test is the balance of probabilities.
6. The motor home and mobile home (the units) both have a bedroom, kitchen facilities and a shower, toilet and sink with a fenced enclosure. The enclosures include paraphernalia such as tables and chairs usually found in domestic gardens. It is not clear why the appellant considers the use to be recreational rather than residential when both units are fully equipped for residential use with bedrooms and have been used as such.
7. The absence of payment of rent by family users or legal agreements does not mean that residential use is not taking place. The appellant refers to overnight use by him and members of his family. Nevertheless, the units with fenced domestic enclosures are in a field which is not part of a domestic setting and residential use has taken place.
8. The appellant states that the units are not permanent structures and are stored temporarily on the land. The allegation does not refer to the units as permanent structures. However, the extent and nature of the development goes beyond temporary storage use. If the units were simply being stored on the land, there would be no need to provide sitting out areas in the form of

Appeal Decision APP/V2255/C/23/3315214

fenced enclosures with table and chairs. The appellant accepts that residential use has occurred. The appeal site was previously a field largely used for grazing of horses and the character and nature of the site has materially changed with the addition of the units for residential use with domestic enclosures and paraphernalia. The breach of planning control alleged has, therefore, as a matter of fact occurred. The appeal under ground (b) must fail.

The appeal under ground (a) and the Deemed Planning Application (the DPA)

Main Issue

9. The effect of the development on the character and appearance of the surrounding area.

Reasons

10. The appeal site consists of a field which has hedges and mature planting to the rear and sides and a two bar fence to the front boundary with the pavement. Beyond the appeal site, the character of the area is of open, largely undeveloped countryside and the appeal site as a field forms part of that countryside character. The appeal site fronts onto Leysdown Road and there is a housing estate to the west beyond mature trees and hedging. To the east, there is a small holding and stables owned by the appellant and access to the appeal site is through a gap in the hedge.
11. The units are located along the eastern boundary of the appeal site and domestic style fencing surrounds each home creating two separate areas within the field. There is also domestic paraphernalia in the form of tables, chairs, garden plants and children's play equipment within the two fenced enclosures. Although the appellant refers to the arrangement as being similar to camping facilities, whether or not camping facilities require planning permission will depend upon the nature and extent of the use taking place which is not necessarily comparable to the development.
12. There are clear views of the field from Leysdown Road due to the level ground and the absence of mature hedging to the front of the appeal site. The units and the surrounding fencing are particularly visible when approaching the appeal site from the west. The presence of two separate domestic enclosures within a field with the units and the domestic paraphernalia is out of keeping and incongruous in a countryside location of a field used for the grazing of horses. The development does harm the character and appearance of the surrounding area.
13. It is therefore in conflict with Policy ST3 of Bearing Fruits 2031: The Swale Borough Plan 2017 (the Local Plan) which, amongst other things, states that in the open countryside outside of the built up boundaries shown on the proposals map, development will not be permitted unless it enhances or contributes to the beauty of the countryside. It is also in conflict with Policies DM14 and CP4 of the Borough Plan which collectively refer to development being well sited and of a scale and appearance that is sympathetic to the location and retains local character.

Appeal Decision APP/V2255/C/23/3315214

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR