



Appeal Decision

Site visit made on 21 May 2019

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2019

Appeal Ref: APP/K2420/C/18/3206296

Oldlands, Fenn Lanes, Dadlington, Nuneaton, CV13 6DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr F Tailor against an enforcement notice issued by the Hinckley and Bosworth District Council.
 - The enforcement notice was issued on 11 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the siting/storage of two caravans and use for associated residential purposes.
 - The requirements of the notice are:
 1. Permanently cease the use of the land for independent residential purposes
 2. Permanently remove the caravans from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act.
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Decision

1. It is directed that the enforcement notice in Section 6 be varied by deleting the words "2 months after this notice takes effect" and substituting instead the words "3 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matters

3. The appellant's evidence refers in places to the use of the caravans as 'ancillary' to the main house. However, there is little detailed evidence before me of the nature and relationship of their occupation and use in the context of the main house and its planning unit as a whole. That being the case the evidence does not support the contention that the residential use of the caravans, in planning terms, is truly *ancillary* to the primary residential use of land associated with the main dwelling, such that it might then be concluded that no *material change of use* amounting to 'development'¹ had taken place. Moreover, no appeal to that effect has been lodged on ground (c), that the matters alleged in Section 3 of the notice did not constitute a breach of planning control on the date the notice was issued (8 June 2018).
4. In addition to ground (g) the appeal is made on ground (a) - that planning permission ought to be granted for the breach of planning control as alleged in the notice, and I have therefore determined the appeal on that basis.

¹ 'Development' is defined in section 55 of the Act to include the making of a *material change of use*

The appeal on ground (a)/deemed application for planning permission

Main Issues

5. Having regard to the Council's reasons for issuing the enforcement notice, and to all other evidence submitted, I consider the main issues are:
 - (i) the effect on the character and appearance of the area; and
 - (ii) the effect on the significance of the Registered Battle of Bosworth Field.

Reasons

(i) Effect on the character and appearance of the area

6. The land affected by the notice is indicated by the red line on the plan attached to the enforcement notice. Within this land the main dwelling, Oldlands, together with its garage and outbuildings sits within a central section of the land. This central section of land is typically domestic and residential in character having a maintained landscaped appearance with lawn areas and a hard surface driveway from the highway access serving the main dwelling. It clearly forms the main garden and residential curtilage to the dwellinghouse.
7. The adjacent section of land to the east is fenced and separated off from the main residential area and is different in character and appearance, being of a more open nature and containing a paddock and manège. Given these factors it appears in context as part of the open countryside rather than part of the residential curtilage of the main house I have previously described. It is within this section of land, close to the southern hedgerow boundary of the field that the two caravans subject of the appeal are located. The caravans are occupied by the appellant's live-in nanny and personal assistant.
8. I acknowledge that the caravans are of timber construction and finished in relatively muted colours, and I also note that from outside the site only the upper parts of their structure are visible above the boundary hedgerow. However, I disagree that their timber chalet style, with PVCu windows and doors, are similar in appearance to agricultural buildings commonly found in rural areas. Seen both individually and as a pair together I find them to be overtly residential in appearance and large urbanising features which encroach into and harmfully diminish the otherwise open countryside character of the landscape. As such, they conflict with criterion (c) of the Council's DPD² Policy DM10.
9. I can understand and appreciate that it may be practical and highly useful to both the appellant and to his two employees to be close at hand. However, I take the view that these are not circumstances in which new dwellings in the countryside can exceptionally be permitted on the basis that they are required to meet an "essential need" for rural workers to live at their place of work in the countryside, as set out in paragraph 79 of the Framework³. In this context the two caravans sited for residential use also conflict with DPD Policy DM4, which requires that all development in the countryside is sustainable by ensuring it meets the criteria at (a) to (e) and (i) to (v).

² Site Allocations and Development Management Policies Development Plan Document (2016)

³ National Planning Policy Framework (2019)

(ii) *Effect on significance of the Registered Battle of Bosworth Field*

10. The appeal site lies within the historic landscape of the Registered Battle of Bosworth Field. The battle took place in 1485 resulting in the death of King Richard III, the last death of an English king in battle, and the succession of the Tudor dynasty to the throne. The site is therefore a designated heritage asset of great national historical, social and cultural importance.
11. Paragraphs 193 and 194 of the Framework state that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Also, any harm to the significance of a designated heritage asset should require clear and convincing justification.
12. In addressing the effect of the development on the significance of the asset the appellant has submitted the *Design, Access and Heritage Statement* (HS) that formed part of the refused planning application (18/00067/FUL).
13. The HS recognises the significance of the site's archaeological potential. It is highly likely that the battlefield retains material which can greatly add to the understanding of the battle. Precautions should therefore be taken to preserve such evidential value. In this regard however I am not clear from the written submissions as to what precautionary measures were taken prior to the siting of the caravans. While the caravans are moveable and thus no permanent archaeological harm would likely result, I am not convinced on the evidence before me that the same can be said in respect of the large concrete slabs that have been constructed, and upon which the caravans are sited. However, on this particular point I note that the enforcement notice does not require their removal. Consequently, this matter does not weigh against allowing the appeal.
14. The HS also rightly recognises that part of the site's significance includes its topographic integrity. While agricultural land management has changed since the battle, the battlefield remains largely undeveloped and permits the site of encampments and the course of the battle to be appreciated. In this regard, for the same reasons I have set out in the first main issue, I consider that the caravans appear as inappropriate urbanising intrusions into the historic pattern of agricultural landscape, and thus they reduce the ability to understand and appreciate the designated heritage asset, resulting in harm to its significance.
15. I agree with the appellant's conclusion that the overall harm to the significance of the heritage asset is less than substantial. Accordingly, paragraph 196 of the Framework requires that the harm should be weighed against any public benefits arising from the development.
16. I accept that the live-in roles of the nanny and personal assistant help the appellant fulfil his role as the director of a highly successful business located in the borough. However, I am not persuaded that any economic, social and environmental benefits of that business are directly dependent upon the siting and residential use of the two caravans subject of the appeal. Moreover, I do not consider the success of the business to be a direct public benefit resulting from the development. Even if it were so, it would not outweigh the harm I have identified. For these reasons I find that the development conflicts with DPD Policies DM1, DM11 and DM12 and the provisions of the Framework.

Other matters

17. I have considered the appellant's proposal that conditions could be imposed to ensure that the caravans are retained for a temporary period only. This it is argued would be an interim measure while planning permission is sought for a scheme to convert the existing garage within the residential curtilage, and to incorporate within it some permanent ancillary accommodation.
18. However, a considerable amount of time has elapsed since the caravans were first sited in 2016, and during which planning permission for a garage conversion scheme could have been sought and granted, but to date no such scheme exists. Moreover, whether planning permission for such a scheme would be granted is not a matter before me. Additionally, two planning applications⁴ which sought to retain the two caravans for such purposes were refused by the Council and no appeals were made against those decisions. This argument therefore adds very little weight in support of allowing the appeal.
19. I have also considered whether any other planning conditions would adequately mitigate the harm I have identified in respect of the two main issues above, but consider that there are none that would do so.

Conclusion on ground (a)

20. For all the above reasons, I conclude that the development results in significant harm to the character and appearance of the area. Additionally, it results in less than substantial harm to the significance of the designated heritage asset which is not outweighed by public benefits. As such, the development fails to meet the requirements of the Council's Development Plan policies and conflicts with the provisions of the Framework.
21. The appeal on ground (a) therefore fails.

The appeal on ground (g)

22. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 2 months. The appellant seeks a period of 6 months in order to allow time for the submission and approval of a planning application for a garage conversion scheme and its subsequent implementation.
23. No detailed case or argument is made out that the occupiers of the caravans would be made homeless and that as such the requirements are not reasonable or proportionate in the context of Article 8 of the Human Rights Act 1998.
24. Given that I have found the appeal development to be harmful, and that a planning application for a garage conversion scheme could have been submitted at any time in the past, I consider that delaying the removal of the caravans is not justified on the basis of an unknown outcome of an application that might be submitted in the future.
25. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible, and in the light of all the relevant factors I see no reason why compliance with the notice requirements could not be achieved within 2 months. However, the Council in their statement of case

⁴ Application Refs: 16/01146/FUL, 18/00067/FUL

have indicated they would be prepared to extend the period for compliance to 3 months. On that basis I will therefore extend the period to 3 months.

26. The appeal on ground (g) succeeds to this limited extent and I have varied the notice accordingly.

Thomas Shields

INSPECTOR