
Appeal Decision

Site visit made on 31 August 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 6 January 2017

Appeal Ref: APP/K2420/C/16/3152517

Land adjacent to the Oaks, Stapleton Lane, Kirby Mallory, Leicester, Leicestershire

- 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 Graham Penney against an enforcement notice issued by Hinckley & Bosworth Borough Council.
 - The Council's reference is 15/00119/UNBLDS.
 - The notice was issued on 16 May 2016.
 - The breach of planning control as alleged in the notice is: Planning permission was granted on 16 October 2013 for the "Change of use of land to holiday park and siting of 4 static caravans (part retrospective)" (Planning Reference 13/00658/COU). Condition 5 stated the following: "The holiday accommodation units shall be for holiday purposes only and shall not be used as the sole or main residence of the occupiers. No person shall occupy any part of the accommodation for a period exceeding four weeks. Furthermore, no person shall occupy the accommodation within a period of two weeks following the end of a previous period of occupation by that same person. The owners/operators of the holiday accommodation shall maintain an up-to-date register of the names and main home addresses of all the individual occupiers and shall make this information available for inspection at all reasonable times to the Local Planning Authority following prior written notification". Following this, a change of use of land from holiday park to use of the land for permanent residential accommodation has occurred in breach of condition 5 of the existing planning permission (Planning Reference: 13/00658/COU).
 - The requirements of the notice are: (a) Cease using the land for permanent accommodation and (b) Remove from the land all domestic paraphernalia associated with the permanent residential accommodation including: the raised balcony, letter box, TV aerial, waste bins, timber, bricks, plastic tubs.
 - The period for compliance with the requirements is three calendar months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected and varied by:

- i) The deletion of the words "section 171A(1)(a) in the first sentence of section 1 and the substitution of the words "section 171A(1)(b);
- ii) The deletion of the description under The Breach of Planning Control Alleged at section 3 and the substitution therefor of the following description: *On 16 October 2013 planning permission was granted for the Change of use of land to holiday park and siting of 4 static caravans*

(part retrospective)" (Planning Reference 13/00658/COU) subject to conditions. Condition 5 stated "The holiday accommodation units shall be for holiday purposes only and shall not be used as the sole or main residence of the occupiers. No person shall occupy any part of the accommodation for a period exceeding four weeks. Furthermore, no person shall occupy the accommodation within a period of two weeks following the end of a previous period of occupation by that same person. The owners/operators of the holiday accommodation shall maintain an up-to-date register of the names and main home addresses of all the individual occupiers and shall make this information available for inspection at all reasonable times to the Local Planning Authority following prior written notification". It appears to the Council that condition 5 has not been complied with and that the caravans on site have been occupied for permanent use as the sole or main residence of the occupiers;

- iii) The deletion of the words "4 years" from the first sentence of section 4(b) and the substitution of the words "10 years"; and
- iv) The deletion of the words "Cease using the land for permanent accommodation" at section 5(a) and the substitution of the following words "Cease the occupation of the holiday accommodation units as residential accommodation other than in accordance with the terms of condition 5 of planning permission 13/00658/COU"

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

2. The description of the alleged breach of planning control within the notice is set out in the banner heading, above. The final sentence alleges that "a change of use of land from holiday park to use of the land for permanent residential accommodation has occurred in breach of condition 5 of the existing planning permission (Planning Reference 13/00658/COU)". That planning permission was approved by the Council in 2013 and was described as the "Change of use of land to holiday park and siting of 4 static caravans (part retrospective)".

The first part of Condition 5 states that the holiday accommodation units shall be for holiday purposes only and shall not be used as the sole or main residence of the occupiers. Only two of the four caravans have been brought onto the site but both parties have confirmed that the planning permission was implemented. The parties do not dispute that the two caravans are currently being lived in for residential purposes, as the main residence of the occupiers, in breach of condition 5. However, the description of the alleged breach refers to an alleged 'change of use of land' as well as a 'breach of condition 5'. Having read the respective statements I was unclear whether the Council considered that a material change of use had occurred or whether the notice was aimed at a breach of condition.

3. Consequently, I wrote to the parties to seek clarification. The appellant was clearly of the view that the breach relates to non-compliance with condition 5, as opposed to a material change of use. The Council confirmed that it

considers that a material change of use has occurred on the basis that the caravans are used as permanent accommodation, as opposed to holiday use. Whilst I note the Council's submissions, the fact that the units are being occupied in breach of condition 5 does not automatically dictate that a *material* change of use has occurred. In effect, a planning permission for holiday caravans is a planning permission for residential use, albeit limited to a particular type of use. It does not automatically follow that a *material* (my emphasis) change of use will occur if the caravans are subsequently changed from holiday occupancy to permanent residential use. That will be a matter of fact and degree in any given case.

4. There is also a difference between planning consents relating to holiday caravans that are limited by the description of development and those that are limited by conditions. In other words, a planning permission that is limited only by the description of development to use for holiday caravans can be changed to permanent residential accommodation, so long as the change is not material. However, where a condition is attached, a change to permanent residential accommodation will be a breach of planning control whether or not the change in use is material.
5. In this case, given that a condition is attached, it is clear that a breach of planning control has occurred. Moreover, the Council do not seek the removal of the caravans but the aim of the section 5(a) of the notice is to ensure that the use of the land is for non permanent accommodation. In that sense, it seems to me that the Council is seeking to ensure that the use complies with the terms of planning permission 13/00658/COU. In those circumstances, I have considered the appeal on the basis that the breach of planning control relates to a breach of condition 5 of planning permission 13/00658/COU. Both parties have submitted comments on the planning merits of the permanent residential use in relation to the appeal on ground (a) and the appellant has clearly submitted the appeal on the basis that it is made against a notice relating to a breach of condition. Therefore, I am satisfied that neither party will be prejudiced by my decision to consider the appeal on the basis that the breach of planning control relates to a breach of condition. I have amended the description of the breach and the requirements accordingly within my formal decision.
6. The relevant time period for taking enforcement action in relation to a breach of condition (or a material change of use) is ten years and not four. I have corrected section 4(b) of the notice to specify the correct period.

The Appeal on Ground (a)

7. Under ground (a), planning permission is sought for the development as approved, without compliance with condition 5. In effect, the appellant seeks the discharge of condition 5 and the imposition of a new condition that would permit the occupation of the two static caravans for non holiday related residential accommodation for a temporary period up to 01 September 2017.
8. Having regard to the reasons for issuing the enforcement notice, and the respective statements of both parties I consider that the main issue is whether the permanent residential occupation of the caravans, in breach of condition 5, represents a sustainable form of development, having regard to local and national planning policy and, if not, whether the economic circumstances relating to the holiday business represent a material consideration that would

outweigh any harm in that regard, such that use for non-holiday related residential accommodation for a temporary period would be acceptable in planning terms.

Sustainable Development

9. The appeal site is situated within the countryside, on a narrow and winding lane, some distance from Kirby Mallory, the closest settlement, which is a small village with limited services. The site is even further from larger towns and service centres. The reason for imposing condition 5 was 'to prevent the occupation of holiday accommodation on a permanent basis which would be considered unsustainable as per paragraph 55 of the National Planning Policy Framework'.
10. Paragraph 55 of the Framework has numerous strands. The first sentence states that housing should be located where it will enhance or maintain the vitality of rural communities. In this case, static caravans are not buildings or houses but are clearly being used to provide residential accommodation and I see no reason why the aims of paragraph 55 should not apply to the case before me. The location of the site is such that it is not well placed to contribute to the vitality of local services. Trips to shops, schools, work or other leisure facilities are generally likely to involve travel over some distance and be reliant upon the car. Any permanent residents are not well located to take advantage of local schools, services or to engage with the local community, being some distance from the village. Consequently, it appears to me that the location of the site is such that it performs poorly in terms of the social wellbeing of any residents and in terms of the environmental impact resulting from the need to make long journeys for work, school, leisure facilities etc. Any permanent residents are not well placed to contribute to the vitality of local shops and services in economic terms. The limited contribution to the supply of residential accommodation does not outweigh the negative impact in those respects.
11. The third sentence of paragraph 55 of the Framework states that local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances. A non-exhaustive list of such circumstances is provided and the use in this instance does not conform to any of the specified examples. The term 'isolated' is not defined in the Framework. In a physical sense, the site is not isolated in that it is closely adjacent to the dwelling at The Oaks and a number of other dwellings are located on Stapleton Lane.
12. However, the aim of paragraph 55 is to promote sustainable development in rural areas. The definition of sustainable development within the Framework has three strands; economic, social and environmental. Consequently, I see no reason why the term isolated should be restricted to the physical relationship of a building, or caravan in this instance, with neighbouring buildings. In the context of sustainable development it seems logical, to my mind, to take account of whether a site is isolated from shops and services. For the reasons given I conclude that the site is isolated and permanent residential accommodation would fail to comply with the aims of paragraph 55 of the Framework.
13. Consequently, having regard to paragraph 55, the use of the land to provide non holiday related residential accommodation does not promote sustainable development in rural areas. Moreover, the use does not represent sustainable

development based on the three stranded definition of sustainable development at paragraph 7 of the Framework, having regard to social, environmental and economic factors. The use fails to safeguard the countryside from unsustainable development, that being one of the key aims of policy DM4 of the Council's Site Allocations and Development Management Policies Development Plan Document (2016) (the DPD), a policy that broadly mirrors the terms of paragraph 55.

14. It is clear to me that the application was only approved having regard to the proposed use as holiday accommodation. The officer report highlights that the development would increase the supply of visitor accommodation and benefit the local economy and local tourism facilities. It strikes me that the way in which a holiday unit would be occupied is significantly different to a permanent residential unit in terms of the effect on the rural economy. Those on holiday are more likely to visit local attractions, such as the Mallory Park racing circuit, more regularly than permanent residents and to spend money at local attractions, restaurants etc whilst on holiday. The economic arguments in favour of tourist related accommodation were clearly a matter that tipped the balance in favour of approving the scheme, having read the committee report.
15. The appellant has noted the situation relating to the Mallory Park racing circuit that is adjacent to the site. The newspaper article provided summarises the financial problems of the circuit and I have no reason to doubt that a reduction in the number of race meetings would have an impact on demand for holiday accommodation at the site. However, an officer report has been forwarded by the agent relating to another application for a holiday caravan site within the district. That report refers to a number of other local attractions and destinations such as Twycross Zoo, Market Bosworth, and Bosworth Battlefield. I note that the site is also in an attractive rural environment and, notwithstanding the problems associated with the racing circuit, no evidence of any attempts to market the holiday accommodation to a wider audience has been provided. Therefore, it is not clear if any efforts were made to ensure the success of the holiday let business prior to letting out the units for non-holiday related purposes.
16. Moreover, the appellant has provided no financial information or information relating to occupancy levels that would enable me to assess the viability of the holiday let business. Without any corroborative evidence it is difficult to attach any weight to the appellant's claims with regard to the financial problems associated with the business. In those respects, the information before me does not demonstrate that the breach of condition is justified on economic grounds.
17. It is also difficult to gauge the extent to which the current letting arrangements will enable the future success of the holiday let business if a temporary relaxation of the condition was granted, as requested by the appellant. In other words, it is not clear how any money raised through letting the units is used or if that money is directed towards the holiday business in any way at all. Whilst paragraph 21 of the Framework identifies a need for planning policies to adjust to changes in economic circumstances, no robust data has been presented in relation to the business in this case and, on the basis of the information before me, there is no evidence to justify the temporary retention of an unsustainable form of development.

18. For the reasons given the use of the land as a residential caravan site for non-holiday related purposes amounts to unsustainable development, contrary to the aims of the Framework and policy DM4 of the DPD. The economic arguments presented do not amount to material considerations that outweigh the presumption in favour of the development plan or the conflict with the Framework that I have identified. Accordingly, I conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission on the deemed application and uphold the enforcement notice, as corrected.

Chris Preston

INSPECTOR