
Appeal Decisions

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 25 August 2016

Appeal Refs: APP/B9506/C/15/3138134 & APP/B9506/C/15/3138135 Land at Charles Lane, Crow, Ringwood, Hants, BH24 3DB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr John Light and Mrs Jenna Light against an enforcement notice issued by New Forest National Park Authority.
- The Council's reference is EN/15/0119.
- The notice was issued on 9 October 2015.
- The breach of planning control as alleged in the notice is:
 - 3.1 "Without planning permission, the material change of use of the land affected from agriculture to a mixed use comprising agriculture and:
 - i. The stationing of caravans for recreational/residential/storage purposes; and
 - ii. The storage /siting of non-agricultural items and paraphernalia including trailer, carriage, horse box, porta-loo and domestic items.
 - 3.2 Without planning permission, the erection of a building shown in the approximate position coloured green on the plan attached to this Notice and the laying of a hardstanding shown in the approximate position coloured orange on the plan attached to this Notice."
- The requirements of the notice are:
 - 5.1 Cease the use of the land affected for the stationing of caravans for recreational/residential/storage purposes.
 - 5.2 Remove the caravans from the land affected.
 - 5.3 Remove all non-agricultural items and paraphernalia including trailer, carriage, horse box, porta-loo and domestic items from the land affected.
 - 5.4 Demolish the building shown in the approximate position coloured green on the plan attached to the Notice to ground level and remove all subsequent materials and debris from the land affected.
 - 5.5 Remove the hardstanding shown in the approximate position coloured orange on the plan attached to this Notice and remove all subsequent materials and debris from the land affected
- The period for compliance with the requirements is 6 weeks after the Notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Application for costs

1. An application for costs was made by New Forest National Park Authority against Mr and Mrs J Light. This application is the subject of a separate Decision.

Procedural matter

2. A site visit was arranged at 13.30 on 12 July 2016 but the appellants failed to attend and this was aborted. A letter was sent by The Planning Inspectorate to the parties on 13 July 2016 explaining that the Inspector was satisfied that a

decision could be reached without an accompanied visit giving 7 days for response if a contrary view was taken. No response was received from the appellants or the Authority. Accordingly I have proceeded to a decision.

Grounds of appeal

3. It is evident from the correspondence on file that the appellants are unrepresented and have some difficulty in understanding the appeal process and the various grounds of appeal that may be argued. Both the Inspectorate and the Authority have tried to offer some assistance in these respects but it remains essentially a matter for the appellants to decide which grounds to pursue and ample time has been provided for this to happen and for any supporting evidence to be supplied.
4. The situation that has resulted is that only ground (b) is being formally pursued on appeal. No fee for a deemed planning application has been submitted so this and any potential ground (a) arguments do not fall to be considered. In the correspondence provided by the appellants there are a number of references to the history of the use of the site, in particular the previous presence of caravans and the building targeted by the notice when the land was purchased by the appellants in May 2015. This claimed background is put forward as justification for the uses continuing and the building remaining. There are also other comments about certain aspects of the allegation being related to uses which are lawful such as the keeping of horses on the land. For the sake of completeness I will also deal with these arguments which would normally be considered under grounds (c) and (d).

The site

5. The land in question shown on the submitted plans and in various photographs consists of a field of about 0.85 hectares accessed via a track leading northwards from Charles Lane, which itself connects to Crow Hill to the north east. The appellants say that the address given on the notice should have included the words "Paddock land" but there is nothing to confirm that these words are part of the correct postal address and I am satisfied that with the plan that accompanied the notice it is clear from the address used in the notice the area of land which is targeted. The photographs provided show the presence of 3 caravans on the land the positions of which are illustrated on a plan which accompanied a Planning Contravention Notice (PCN) served on 28 August 2015. The plan that accompanied the Enforcement Notice does not include this detail but as the red line on that plan encompasses the whole field it applies to any caravans on that area of land. The notice does however show the positions of the building and hardstanding the subject of the notice.

Ground (b)

6. The basis of an appeal on this ground is that the breaches of planning control alleged in the notice have not taken place as a matter of fact. I will deal with each element in turn but there is firstly a general point to cover. The appellants argue that when they bought the land in May 2015 there were 2 old caravans on the land as well as a stable building with a run attached used to keep a pig in, another wooden shed and some trailers as well as other debris. Photographs supplied by the appellants although undated tend to bear this out. However, there is nothing to show that when they bought the land these uses and buildings were lawful and nothing subsequently has been provided to show

that on the balance of probability this was the case. They argue that they sought advice from the agent when purchasing but I do not know the extent of this advice and whether the matter of the need for planning permission was discussed.

7. The fact that certain development had taken place does not mean that it was lawful or immune from enforcement action and any responsible purchaser would normally seek to clarify this before buying the land. The material point advanced by the appellants seems to be that if unauthorised development took place much of it was carried out by former owners or occupiers. This however is not a legitimate defence on ground (b) as it is not a matter of who perpetrated the alleged breach but whether it has occurred as a matter of fact and is still occurring on the land. For these reasons the arguments about others being responsible carry no weight as any unlawful development that is continuing passes with the land and does not become lawful due to land sale to another party.
8. Coming to the specific allegations the appellants admit that one of the caravans – not those already on the land when they purchased – has been brought onto the land by them. The explanation given is that they had to move out of the previous property they rented and although they then managed to secure a pitch at a caravan park in Matchams Lane, Hurn they were unable to keep their caravan there because it was a trailer type. It was therefore moved to the appeal site and is primarily used for storing household belongings and domestic items and has once been used to reside in. This amounts to the stationing of a caravan on the land for household storage and occasional residential occupation and being an element of the alleged breach has occurred as a matter of fact. As to the other two caravans one is said in the PCN response to be used keep horse food and tack in and the other is disused and due to be disposed of. The use of the former appears to be related to the riding or driving of horses with carriages which would equate to a recreational use as alleged in the notice. The latter whilst apparently disused still amounts to the stationing of a caravan on the land. Therefore I find the breach alleged in paragraph 3.1(i) of the notice has occurred as a matter of fact.
9. In terms of paragraph 3.1(ii) of the notice there is photographic evidence to confirm the presence of a portaloo, some trailers or carriages, a horse box and other domestic items (e.g. sun loungers and a child's trampoline) on the land in June and September 2015 shortly before the notice was issued. The appellants have explained why these items are required but they have no seeming connection with agriculture and are there for purposes related to either residential or recreational use. I therefore find that this allegation has taken place. As made plain above the claim that some of these items were already on the land when purchased does not mean that the breach has not occurred as a matter of fact.
10. Turning to paragraph 3.2 of the notice the appellants admit laying the hardstanding after the land was purchased in the first week of June 2015. An explanation of why this was necessary to allow vehicles to access the land and manoeuvre is provided but this does not alter the fact that these engineering works have taken place in line with the wording of the allegation.

11. The other element of paragraph 3.2 is the building which was said to be present when the land was bought and used to keep a pig inside, which would constitute an agricultural use. The appellants claim that the building has simply been adapted and repaired by the replacement of the roofing material and the attaching of new timber boarding with the original frame remaining. The Authority take a different stance arguing that although an aerial photograph of 2011 shows the presence of a small field shelter the present building is essentially a new one with a new floor, roof and walls and with windows and doors added and wood burning stove incorporated. It is argued that although some of the timber from the original structure may have been re-used the majority is new and so the works carried out go beyond repair or refurbishment. I have compared the Authority's photographs of the building dated 11 June 2015 and 29 September 2015 which suggest to me that between these dates substantial work to the original structure took place to the extent that what now exists is essentially a new building as claimed. Consequently I find that the alleged breach has occurred as matter of fact.
12. Bringing these points together I am satisfied that from what is before me the alleged breaches of planning control set out in the notice have occurred as a matter of fact. Consequently there is no success on ground (b).

Grounds (c) and (d)

13. As explained above although these grounds were not specifically pursued on the appeal form it is evident from the representations made by the appellants that they believe that the previous use for the stationing of caravans and the related activities that took place are arguments in their defence. No planning permissions or lawful development certificates have been granted to indicate that the lawful use of the land is anything other than for agriculture. The Authority has provided a series of aerial photographs dating from 2000 to 2011 which do not appear to show any caravans stationed on the land. The latter does show the timber field shelter but apart from that the land is simply down to grass. To succeed on any claim that the land could be used for stationing caravans it would be necessary to demonstrate on the balance of probability that such a use had been undertaken for a period of 10 years before the issuing of the notice without any material break. There is no such evidence and the presence of caravans, whatever their use may have been, has only occurred latterly well within the 10 year period.
14. The storage of other items on the land referred to in paragraph 3.1(ii) of the notice does not appear to have any clear relationship with the agricultural use of the land and again from photographic evidence has only been introduced onto the land within the 10 year period before the notice was issued. The hardstanding is an engineering operation which appears to have been carried out in connection with the unlawful use of the land and within 4 years of the issuing of the notice so this is not lawful. The building in question I have found to be essentially a new structure and this too has been erected within the critical 4 year period for building operations. I therefore consider that even if grounds (c) and (d) had been formally pursued the evidence before me indicates there would have been no success on these grounds.

Conclusion

15. For the reasons given above I consider that the appeals should not succeed.

Decisions

16. The appeals are dismissed and the enforcement notice is upheld.

N P Freeman
INSPECTOR