



## Appeal Decision

Site visit made on 12 December 2023

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 01 February 2024**

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**Appeal Ref: APP/L3245/C/23/3320664**

**Land to the Southeast of Stitt Cottage, Ratlinghope, Shropshire SY5 0SN  
(Foxglove Cottage)**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alexander Johnson against an enforcement notice issued by Shropshire Council.
  - The notice was issued on 21 March 2023.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from agricultural use to a mixed use of agricultural and use as a caravan site for residential use including the stationing of two static caravans and three lorry back storage units all in connection and associated with the use of the land as a caravan site for residential purposes.
  - The requirements of the notice are to:
    1. Cease the use of the Land as a caravan site for residential purposes.
    2. Remove from the Land two static caravans marked in the approximate positions 'A' and 'B' on the attached plan.
    3. Remove all equipment and paraphernalia brought onto the Land in connection with the use of the Land as a caravan site for residential purposes.
    4. Remove from the Land three lorry back storage units located in the approximate position marked with a 'C' on the attached plan in connection with the use of the Land as a caravan site for residential purposes.
    5. Remove all paraphernalia brought onto the Land in connection with the use of the Land as a caravan site for residential purposes stored within three lorry back storage units marked 'C' on the attached plan.
    6. Remove the touring caravan from the Land and all associated residential paraphernalia stored within.
  - The period for compliance with requirement 1 is: 3 (three) months. The period for compliance with requirements 2, 3, 4, 5, and 6 is: 6 (six) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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### Decision

1. It is directed that the notice be varied by deleting the following requirement at paragraph 5:

“4. Remove from the Land three lorry back storage units located in the approximate position marked with a 'C' on the attached plan in connection with the use of the Land as a caravan site for residential purposes.”
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

### **The appeal on ground (b)**

3. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control *have not occurred* as a matter of fact. It concerns the circumstances leading up to, and the time when the notice was issued. The onus is on the appellant to demonstrate, with sufficiently precise and unambiguous evidence, that the use of the appeal land had not changed from an agricultural use to a mixed use for agricultural and residential purposes. The test of the evidence is on the balance of probability. The planning merits of the matter alleged do not fall to be considered.
4. I observed at the time of my visit that there were two static caravans, a touring caravan and three lorry backs sited on the lower levelled section of the appeal site. One static caravan was being lived in by Mr Johnson, the appellant, and the other was in a dilapidated state and seemingly unused condition. The touring caravan was occupied by the appellant's pet dog. Although it is stated that the lorry backs are used for tools and equipment, there is no evidence that these are for purely agricultural purposes. I observed an assortment of stored items and in amongst the detritus of objects, there were items of a domestic nature.
5. The appellant acknowledges that they live in one of the caravans on the appeal site and thus does not dispute that the agricultural land has been used for residential purposes. However, they consider that the lorry backs and other caravans do not serve a residential purpose.
6. From the evidence presented and from what I observed, the use of the land has a mixed agricultural and residential purpose and the mobile structures that are sited on the land are utilised in association with that use. It has not been demonstrated that any are used purely in association with an agricultural use of the land. Accordingly, the matters alleged have occurred and there has been a change of use of the land from agriculture to a mixed agricultural and residential use.
7. The appeal on ground (b) therefore fails.

### **The appeal on ground (d)**

8. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control.
9. The notice was issued on 21 March 2023 for a material change of use of the land from agriculture to a mixed use of agriculture and residential use as a caravan site<sup>1</sup> for residential use including the stationing of two static caravans and three lorry back storage units, all in connection and associated with the use of the land as a caravan site for residential purposes. There is no dispute that the caravans and lorry backs are mobile structures which have been transported to the site. Their siting on the land is a use of the land rather than operational development.

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<sup>1</sup> The term 'caravan site' is defined in s1(4) of the Caravan Sites and Control of Development Act 1960 as meaning 'land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed'.

10. Under section 171B(3) of the 1990 Act, where there has been a breach of planning control consisting of the change of use of any land such as in this case, the immunity period is 10 years and no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Therefore, for the ground (d) appeal to succeed, the appellant must show that the alleged mixed use had occurred by no later than 21 March 2013. It would also be necessary for the appellant to show that the agricultural and residential use of the land had not been substantially interrupted by another use during the 10 year period.
11. Submissions from a third-party state that following the commencement of groundworks and the creation of a new access, three lorry backs and a caravan were brought on to the appeal land. This is reported to have occurred in May 2013. Photographs which are said to have been taken in April 2013 provided by the Council, show groundworks to have taken place and the site to be devoid of any structures. Subsequent photographs dated 15 November 2013 show the site to be occupied by a yellow-coloured lorry back, a white-coloured lorry back and a touring caravan. As these photographs are taken from the roadside at a lower level and the site is screened with black plastic covering a fence, it is possible only to see the roofs of the units.
12. At this time, the land did not belong to the appellant. A Planning Contravention Notice (PCN) dated 8 July 2013 completed by a previous landowner states that 3 containers (the lorry backs) were brought on to the site in May (2013) for the purpose of storing animal feed and equipment. The caravan was also said to have been brought onto the land at the end of May and used for 'rest while putting pigs hut up and chicken house at weekends'. Their intention for the land is stated as being for 'keeping livestock and to become a self-supporting small holding'. In August 2018, a planning application<sup>2</sup> was refused for the change of use of the land and the erection of two holiday cabins. The land at this time had changed hands but did not belong to Mr Johnson. There is no evidence before me to show that the land was not in an agricultural use.
13. The appellant's grounds of appeal to support their case are limited. They claim that the lorry backs and a static caravan were on the site when they purchased the land and have been on the land for more than 10 years. While there is evidence of the lorry backs being sited on the land in May 2013, there is no evidence to show when a *static* caravan was sited on the land. Notwithstanding this, the alleged breach of planning is the material change of use of the land which is the result of the introduction of a residential use. Therefore, in determining when a change of use took place for the purposes of the ground (d) appeal, regard should be had to when the use of the land for *residential* purposes actually commenced.
14. The appellant states that they have resided at the appeal site since 2019, although they declare that council tax has been paid on the 'property' since January 2020. This is broadly consistent with third party submissions which report that in February 2020 an additional 'large' caravan was brought on to the land along with a touring caravan. These will have facilitated the material change of use by enabling the residential use of the land. Thus, from the presented evidence, and on the balance of probabilities, a change of use of the

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<sup>2</sup> Council ref: 18/03577/FUL

land occurred when the residential use of the appeal site commenced in 2019 or 2020.

15. Consequently, the evidence provided falls short of demonstrating that the mixed use of the land for agriculture and residential purposes occurred more than 10 years prior to the notice being issued. Therefore, in accordance with Section 171B(3) of the 1990 Act, at the date when the notice was issued, the matters alleged in the notice were not immune from enforcement action.
16. Accordingly, the appeal on ground (d) cannot succeed.

### **The appeal on ground (f)**

17. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place. For the appeal on ground (f) to succeed, the appellant would need to propose alternative steps which would remedy the breach.
18. The appellant claims that none of the structures, except for the static caravan in which he resides, are utilised in association with the residential use of the land and therefore he argues that their removal goes beyond what is required to remedy the breach. As set out under ground (b) above, it has been established that a material change of use of the land has occurred and that the structures on the land have been utilised in a manner to support a residential use.
19. Nevertheless, from the evidence presented by the Council and interested parties, it seems that the lorry backs have remained on the land since they were first brought to the site in May 2013. At that time, the lorry backs had been brought on to the land by a former landowner and used, as detailed in the PCN and not disputed by the Council, in association with the agricultural use of the land. There is no evidence to demonstrate that this use of the lorry backs changed until Mr Johnson bought and moved on to the land.
20. The siting of the lorry backs had been initially undertaken for a different and lawful use in association with the agricultural use of the land and were not brought on to the land for the purpose of a residential use. Thus, they are not considered integral to the making of the material change of use of the land. Their removal, therefore, goes beyond what is deemed necessary to remedy the breach. Accordingly, the requirement to remove them from the land should be deleted from the notice because by complying with the notice, the intended use of the lorry backs for agricultural purposes could continue.
21. Notwithstanding my consideration of the lorry backs, it seems to me that while the one static caravan may have been on the land at the time the appellant purchased the land, there is an absence of evidence to show that it had been brought on to the site to serve an agricultural purpose. Therefore, I find that the remaining requirements of the notice are not excessive but are the minimum necessary to remedy the breach that has occurred. There is nothing short of ceasing the notice land's residential use and the removal of the remaining

mobile structures which facilitate the residential use that would achieve the purpose behind the notice.

22. Thus, there is partial success on the appeal on ground (f) and the notice will be varied accordingly.

**The appeal on ground (g)**

23. This ground of appeal is that any period specified in the notice in accordance with s173(9) of the Act falls short of what should be reasonably allowed. In making an appeal on ground (g), the onus is on the appellant to suggest different compliance periods.
24. The appellant has not identified what they consider a reasonable period to comply with the notice, although they do request that if three months is insufficient to secure alternative accommodation more time should be given. The need for an extension of the period for compliance needs to be balanced against the harm set out in the notice, which in this case is the harm to the environment and the conflict with the Development Plan. I appreciate that finding suitable accommodation can be challenging and I note that the appellant has registered with Shropshire Homepoint to find alternative accommodation. However, nothing has been put forward to demonstrate that there are no other suitable options available.
25. I recognise that compliance with the enforcement notice would interfere with the appellant's rights as set out in article 8 of the Human Rights Act and dismissal of the appeal on ground (g) would have an impact on the timing and therefore impact of that interference. However, this must be weighed against the wider public interest. Overall, on the evidence before me, and with nothing to persuade me otherwise, I conclude that three months should be sufficient to secure suitable alternative accommodation and six months to comply with the remaining requirements is reasonable considering the reasons for issuing the notice. I am satisfied that any interference with the appellant's human rights are proportionate to the need to adhere to planning law and policy.
26. The appeal on ground (g) therefore does not succeed.

*S A Hanson*

INSPECTOR