



## Appeal Decision

Site visit made on 5 May 2022

**by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)**

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

**Decision date: 31 May 2022**

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**Appeal Ref : APP/L3815/C/21/3278883**

**Land at 82A Fletchers Lane, Sidlesham, West Sussex**

- 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 Charles Bloxham against an enforcement notice issued by Chichester District Council.
- The notice was issued on 15 June 2021 .
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a residential mobile home/caravan site.
- The requirements of the notice are (i) cease the use of the land as a residential mobile home/caravan site and (ii) remove all mobile homes/caravans, ancillary structures and storage container buildings from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e ) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.**

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### Ground (e) appeal

1. This ground of appeal is that copies of the notice were not served as required by s172 of the 1990 Act.
2. The Council has provided Land Registry searches, certificates of service and registered post receipts. This documentation suggests that service was as required by the Act.
3. The Appellant claims that one of the recipients of the notice has no interest in the land. But this would not invalidate service and in any event the power exists to disregard incorrect service where those who should or who have been served have not been substantially prejudiced. I find no prejudice to have occurred in this case and therefore any incorrect service can reasonably be disregarded.
4. For the reasons given, the appeal on ground (e) fails.

### Ground (a) appeal and deemed application

#### Main Issues

5. The main issues in the determination of this appeal are (i) whether or not the use of the mobile home/caravan site constitutes a suitable site for housing and (ii) the effect of the development on biodiversity.

## Sustainable development

6. The appeal site is located within designated countryside, outside any settlement boundary. It has been used in the past as a horticultural fruit business.
7. The development plan (including the Chichester Local Plan (the CLP)) mirrors the National Planning Policy Framework (the Framework) presumption in favour of sustainable development and in seeking to control inappropriate development within the countryside. The Framework states that development of isolated homes in the countryside should be avoided unless certain criteria such as essential need for a rural worker are met. Policy 2 of the CLP sets out a settlement hierarchy and provides that development outside settlement boundaries is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with policies 45-46. Policy 45 concerns development within the countryside and states that development must require a countryside location, be located close to an established settlement and in terms of scale, siting, design and materials have minimal impact on the landscape and rural character of the area. Policy 5 concerns new housing and sets out indicative parish housing numbers and states that any rural exception site be limited to affordable housing to meet local need.
8. I saw at my site visit mobile homes, multiple large commercial type greenhouses and storage containers. There is no dispute that the site is being used as a residential mobile home/caravan site and that containers are being used in part for residential storage as well as roofing materials. There is no evidence that the mobile homes and storage containers are required in connection with a horticultural use of the site. The Appellant says that he disposed of some mobile homes upon purchasing the site and was not aware that planning permission was needed. But that is not a ground of appeal and I must determine this appeal based on the development at the time of issue of the notice.
9. Planning permission was granted in 2014 for temporary stationing and storing of mobile homes within the horticultural holding for seasonal part time horticultural workers employed at the site. The Permission includes conditions requiring the mobile home use to be discontinued permanently on or before 14 October 2017 and restricting occupation to persons employed in horticulture on the holding. This permission does not authorise the current use of the land.
10. The site sits outside a settlement boundary as defined in the CLP and there is no indicative housing number set for Sidlesham. The nearest service settlements are some distance from the site requiring a reliance on private motor vehicles. The Appellant says that he is growing laurels in order to generate funds for the redevelopment of the site. But there is no evidence before me that the growing of laurels or maintenance of the site requires on site residential accommodation. There is no evidence that the growing of laurels meets an essential local rural need.
11. The development does not satisfy any of the criteria in the development plan that might justify new dwellings in the countryside. The principle of residential use in this location is not supported by the development plan or the Framework. If allowed to remain as a permanent mobile home/caravan site it would result in the creation of new residential units in open countryside

contrary to policy. I note the objection from the Fletchers Lane Residents Association.

12. I acknowledge the benefits to the Appellant and his family of being able to live on the site but these benefits do not outweigh the identified harm. Any plans for commercial use are speculative with no certainty as to implementation or timetable. The Appellant says that the site is home to his young children who are too young to be left away from the site when he is working there for long hours. Interference with the way the Appellant and his family use the property must be proportionate so as not to violate individual rights. But there is no evidence before me to suggest that locally available housing stock is not available nearby.
13. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Policy Guidance. The Appellant says that temporary permission would enable him to secure commercial planning permission for the site and that this will not be achievable if residential accommodation has to be secured elsewhere. But there is no certainty that commercial development will be permitted in the foreseeable future. Temporary permission would enable the harm to continue. I cannot conclude with any certainty that planning circumstances will change in a particular way in any given period of time. The existence of an earlier temporary permission does not alter this conclusion.
14. For the reasons given above, the development as a matter of principle does not provide a suitable site for housing and conflicts with relevant policies in the development plan and the Framework. Material considerations do not outweigh determining the appeal otherwise than in accordance with the development plan.

#### Biodiversity

15. Policy 49 of the CLP provides that development should safeguard biodiversity value avoiding harm to habitats and species which are protected. Policy 50 concerns development and disturbance of birds in the Chichester and Langstone Harbours Special Protection Areas and says that planning permission will not be granted in the absence of appropriate avoidance and/or mitigation measures. The Framework states that the presumption in favour of sustainable development does not apply where development is likely to have a significant effect on a habitats site unless an appropriate assessment has concluded that the project will not adversely affect the integrity of the habitats site.
16. The site is a reasonably sensitive location in terms of biodiversity. A public right of way runs along the western boundary and a ditch network which bounds the site to the north, west and south is identified as a Bat and Watervole Movement and Bat and Watervole Home Network. The site is also located within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours Special Protection Area. There is no ecological survey or assessment of the effect on habitats before me .
17. I have considered the use of a suitably worded condition to secure an appropriate survey along with any potential associated mitigation. But there is insufficient evidence before me to conclude that a survey is likely to conclude that the development would not be harmful to the habitat or that any such

harm could be mitigated. On that basis this matter could not reasonably be controlled by way of a planning condition.

18. For the reasons given above, I am not satisfied that the development is not harmful to the biodiversity of the site. The development conflicts with policies in the development plan and the Framework.

#### Conclusion

19. For the reasons given above, the development represents an unsustainable form of development which is contrary to development plan policies and I cannot conclude on the evidence before me that the development is not harmful to the biodiversity of the site. There are no material considerations before me that are sufficient to indicate that a decision to allow a residential use should be made other than in accordance with the development plan. I do not consider that planning permission should be granted for the change of use as alleged in the notice. I shall refuse planning permission on the deemed application and this ground of appeal does not succeed.

#### **Ground (f) appeal**

20. This ground of appeal is that the steps required by the notice exceed what is required to satisfy its purpose. There are two purposes that an enforcement notice can seek to satisfy. Firstly, to remedy the breach of planning control and secondly to remedy the injury to amenity caused by the breach. In this case the notice requires removal of the caravan/mobile home and cessation of the use of the land for the stationing of a caravan/mobile home for residential purposes. Its purpose is therefore to remedy the breach of planning control.
21. The Appellant says that his intention is to redevelop the site and remove all existing structures. He asks that the structure remain for possibly 2 or 3 years until a permanent solution for redevelopment can be found.
22. But this timetable is speculation as there is no certainty about future redevelopment of the site and I have rejected the option of a temporary planning permission in the ground (a) appeal above.
23. No lesser steps are before me that would satisfy the purpose of the notice. I have considered varying the notice to allow the retention of the mobile homes whilst ensuring that their residential use ceases but this is not sought by the Appellant and there is no evidence before me that there is justification for use of the mobile homes for a use ancillary to the lawful use of the land.
24. For the reasons given above, this ground of appeal does not succeed.

#### **Formal Decision**

25. 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 1990 Act as amended.

*S. Prail*

**Inspector**