Appeal Decisions

Site visit made on 19 May 2015

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 6 August 2015

Appeal A Ref: APP/B2355/C/15/3003202
Appeal B Ref: APP/B2355/C/15/3003203
7 Hardsough Fold, Irwell Vale, Ramsbottom, Burry BL0 0QN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Miss Catherine Morrison (Appeal A) and Mr Arran Boyes (Appeal B) against an enforcement notice issued by Rossendale Borough Council.
- The Council's reference is 132/2014/ENF.
- The notice was issued on 22 December 2014.
- The breach of planning control as alleged in the notice is the unauthorised replacement of timber window frame units with UPVC window frames at the property.
- The requirements of the notice are to remove all UPVC window units (with the exception of the bathroom window on the rear elevation, which was previously UPVC) in a manner not to damage the stone surrounds to the window openings and replace with the previously installed timber mock-sash window units, or if these are not available with top hung outward opening mock sash style timber units of identical design, appearance, colour (painted gloss white) and materials to those previously installed.
- The period for compliance with the requirements is 3 months on or before 23 April 2015.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions – Appeal A and B

1. The appeals are allowed on ground (g), and the enforcement notice is varied by the deletion of the entire text in paragraph 6, time for compliance, and the substitution therefor of the following text: *'The period of compliance is 6 months from the date the notice takes effect'.*

2. Subject to the variation, both Appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a)

3. The site is situated in the Irwell Vale Conservation Area (*'the CA'*). It is situated in an area that is subject to an Article 4 Direction dated 18 February 1985, which prohibits the alteration or improvement of a dwelling in the CA.

4. The **main issue** is whether the replacement of timber window frame units with unplasticized polyvinyl chloride (known as *'uPVC'*) window frames preserves or enhances the character or appearance of the CA.

5. Policy 1 of the Council's Core Strategy (*'the CS'*)[1] sets out general development principles. Amongst other things, the policy seeks to ensure proposals complement and enhance surrounding areas through inclusive design and locally distinctive materials which enhances the character and heritage of the borough. Policy 16 seeks to protect, conserve, preserve and enhance the historic environment. Policy 23 promotes high quality design and policy 24 sets out requirements for planning applications. The main aims and objectives of these policies are broadly consistent with advice found in paragraphs 17, 56, 126, 131 and 132 of the National Planning Policy Framework.

6. The character of the CA is mainly residential defined by the arrangement and layout of dwellings. The simple architectural style of dwellings contributes to the special interest of the CA. Timber framed windows are an important aspect of the dwellings' external elevations. The appeal property is a two-storey terraced dwelling of stone and slate construction. It is situated in a block of similarly designed dwellings, but its end-of-row positioning makes it prominent in the street scene. It sits adjacent to the River Irwell and is the first in the row when crossing the bridge over the river. The white plastic casements are clearly visible from public vantage points, especially from the bridge which forms the main approach to the eastern part of the CA.

7. The nub of the appellants' argument is that uPVC double-glazed units are not prohibited by local and national planning policy. The contention is that the replacement frames are identical to the original casements. No. 7 is an unlisted building and there have been alterations to the fenestration details of existing properties in the CA. However, the white uPVC frames have materially altered the external appearance of the host dwelling due to the thickness of the frames, glazing bars and beading. In comparison to the slender appearance and lines of timber framed windows, the uPVC windows appear bulkier and meatier due to their chunky profile. Additionally, the plastic finish gives a shiny and polished effect. Given the location of the windows, I find that the improvements harm the utilitarian and simple architectural style and external appearance of the host dwelling.

8. The appellants maintain that the use of uPVC as a material for windows and doors is commonplace in the CA. They point to other properties in the vicinity of the site including a recent extension[2]. However, the block in which no. 7 is positioned includes properties with timber windows. On closer examination the subject development appears different to how the original timber windows would have looked.

9. Despite the vegetation along the river embankment, the side elevation of the host dwelling is visible from the bridge. The front and rear elevations are noticeable from various public vantage points, due to no. 7's positioning. I find that the uPVC double-glazed windows harm the simple and uniform external appearance of the group of dwellings in which no. 7 is located. The replacement uPVC windows are unsympathetic to the character of the CA.

10. Double-glazed uPVC frames are commonly used in the construction industry for energy efficiency and I note the overall improvement in the thermal qualities of the dwelling. However, the replacement windows fail to respect the CA's special

[1] From East to West Making Rossendale the Best Core Strategy Development Plan Document The Way Forward (2011 – 2026) adopted 8 November 2011.
[2] 2014/0014 dated 15 January 2014.

architectural interest, because the use of uPVC is inconsistent with the simple architectural style of no. 7 and unsympathetic to the character of the wider CA. The development causes substantial harm to the heritage asset and I attach this finding substantial weight.

11. In a letter dated 10 March 2015, the Council indicate their willingness to replace the unauthorised windows on the front and gable elevations with white uPVC sash windows. These replacements would need to be a subject of a separate planning application, because the design and appearance of the proposed sash windows would be materially different.

12. On the basis of the available evidence, for the following reasons, I find the facts of this case are materially different to the two appeal decisions[3] cited in support of the development. Lowestoft: the Inspector found that site not to be notably prominent and set back from the road. The historic and architectural value of the building has been compromised by a side extension which has been built including uPVC windows in accordance with a planning permission. Gloucester: this site is situated in a street characterised by a mix of properties where two-thirds have uPVC windows on the external elevation. In comparison, no. 7 retains its original features and is highly visible because of its location. I am not persuaded that these appeal decisions are strong precedents in favour of this development. In any event, every planning application should be considered on its individual merits.

13. For all of the above reasons, I conclude the replacement of timber window frame units with uPVC window frames fails to preserve or enhance the character or appearance of the CA. Accordingly, the development fails to comply with the main aims and objectives of CS policies 1, 16 23 and 24. It fails to meet with advice found in paragraphs 17, 56, 131 and 132 of the Framework.

Ground (f)

14. It is necessary to consider whether the steps required by the notice exceed what is necessary to remedy the breach of planning control (s174 (1) (f) of the Act). The notice should specify the steps which the Council require to be taken, in order to achieve, wholly or partly, the purposes set out in section 173 (4) (a) and (b) of the Town and Country Planning Act 1990 as amended. Those purposes are: (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

15. From the wording of the notice's requirements, it seeks to remedy injury to amenity given the requirement to replace the uPVC frames with previously installed timber mock-sash windows.

16. The appellants maintain the windows in the side elevation are not visible and should remain. They seek a variation to that effect. On the contrary, I have found that the side elevation is noticeable from public vantages. I consider that

[3] Appeal refs: APP/T3535/D/10/2126823, allowed 28 May 2010, relates to the replacement of existing single glazed wooden windows with double glazed uPVC windows to two thirds of the property at 15 St Peters Road Lowestoft Suffolk. APP/Q1445/D/12/2186692, allowed 10 January 2013, replacement of timber windows and doors to front elevation with new uPVC at 75 Upper Gloucester Road Brighton.

the installation of uPVC windows on the side elevation in breach of planning control alters the external appearance of the whole building.

17. I note the argument that alternative uPVC sash windows may be appropriate but no specific details have been submitted. In any event, I have already found that the design of this type of window would be significantly different. In my view, varying the notice's requirements so that uPVC sash windows are installed would undermine the reasons for taking enforcement action in the first place and fundamentally alter the nature of the development originally enforced against.

18. To address the planning conundrum the appellants may consider submitting a planning application to the Council. I shall consider the possibility of extending the period of compliance.

19. I find that the remedial nature of the requirements would remedy the injury to amenity caused by the breach of planning control. Nothing short of full compliance would achieve the purpose of the notice. Therefore, the requirements are not excessive. Ground (f) fails.

Ground (g)

20. The appellants maintain that the period for compliance is too short and argue 12 months is necessary. This is mainly due to the need to obtain quotations and arrange for the work to be done. I note concerns about the potential effect of dismissal on financial resources. However, given the nature of the work required by the notice's terms, a compliance period of 12 months is excessive.

21. The breach of planning control should not be allowed to continue more than absolutely necessary. This is because of the harm caused to the character and appearance of the host dwelling and CA. However, the Council indicate a potential solution can be found to the planning difficulty. I consider that six month compliance period would be reasonable in the circumstances. This would strike the right balance between the potential effect of my decision on the appellants and the taking of enforcement action in the wider public interest.

22. As I have varied the period of compliance, set out above, the appeals on ground (g) succeed to this limited extent only.

Overall conclusions

23. For the reasons given above and having considered all other matters, I conclude that the appeals fail on grounds (a) and (f). I have refused planning permission on the deemed applications. I have upheld the enforcement notice with a variation to the period of compliance as 6 months is reasonable.

A U Ghafoor

Inspector

The Planning Inspectorate

Appeal Decisions

Site visit made on 2 March 2015

by David C Pinner BSc (Hons) DipTP MRTPI

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

Decision date: 18th March 2015

Appeal Ref: APP/B2355/C/14/2216822 (Appeal A)
The White Stables, Land off Coal Pit Lane, Bacup, OL13 9HA

- 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 Miss Joanne Parker against an enforcement notice issued by Rossendale Borough Council.
- The notice was issued on 7 March 2014.
- The breach of planning control as alleged in the notice is the unauthorised change of use of the land from agricultural use to residential use enabled by the siting and use of a static caravan on the land for residential use.
- The requirements of the notice are to remove the static caravan and all residential paraphernalia from the land and cease the use of the land for residential purposes.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/B2355/C/14/2216823 (Appeal B)
The White Stables, Land off Coal Pit Lane, Bacup, OL13 9HA

- 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 Miss Joanne Parker against an enforcement notice issued by Rossendale Borough Council.
- The notice was issued on 7 March 2014.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the unauthorised erection of a stable block, tack room/feed store and associated hard standing on the land.
- The requirements of the notice are to:
  - i) Remove the stables and tack room/feed store from the land;
  - ii) Remove the hard standing from the land;
  - iii) Remove the wooden sleepers acting as a retaining structure from the land;
  - iv) Reinstate the land to its previous condition and levels.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decisions

1. Appeal A is dismissed.

2. Appeal B is allowed on ground (f), and the enforcement notice is varied by the deletion of the requirement to remove the hard standing from the land and by the prefacing of the last requirement by the words "Except for the area of hard standing". Subject to these variations the enforcement notice is upheld.

Preliminary matters

3. Neither appeal has been made on the basis that planning permission ought to be granted for the alleged unauthorised development. The planning merits of the developments are therefore irrelevant to the consideration of these appeals. Matters such as policies, precedents, impacts of the development or justification for the development are irrelevant to the consideration of these appeals.

4. The alleged breach of control in the enforcement notice relating to Appeal B contains the tautological construction *"without the benefit of planning permission, the unauthorised..."* If a deemed application had been made, it would have been necessary to correct the notice by deleting the word "unauthorised" since the description of the development in a deemed application would be taken from the allegation.

Appeal A - Ground (b)

5. The appeal on ground (b) relates to Appeal A only and is made on the basis that the caravan is not being used for residential purposes but is only used to provide shelter and messing facilities in association with the use of the land as an agricultural smallholding.

6. By the time I made my site visit, the static caravan the subject of the notice had been removed from the site and a touring caravan had replaced it. The appellant's evidence is that she lives remotely from the site, which is in an exposed, elevated location. Her only purpose in bringing any caravan to the site was to provide somewhere for her and her dogs to rest and shelter in connection with her agricultural activities of looking after her animals.

7. It has long been held by the Courts (e.g. *Wealden District Council v Secretary of State for the Environment and Another [1988] JPL 268*) that a caravan brought onto land for purposes ancillary to the lawful use of the land involves no development or breach of planning control. In *Wealden*, the Judge pointed out that the fact that the caravan was an unattractive feature on the landscape was quite irrelevant to the question whether its stationing and use (in that case, ancillary to the agricultural use of the land) constituted a material change of use.

8. On the appellant's evidence, it would appear that the mobile home was only on the land for purposes ancillary to the agricultural use of the land. However, the Council had other evidence, albeit very limited, that suggested that the caravan was being, or at some point had been, used by the appellant for residential purposes. This evidence comprises an advertisement offering the appellant's land for horse grazing with the assurance that "the owner lives on site" and the existence of a hot tub next to the caravan.

9. Whilst the appellant has explained those matters, in an appeal on ground (b), the burden of proof lies with the appellant to demonstrate, on the balance of probability, that the alleged breach of control has never occurred as a matter of fact. The removal of the static caravan has made it impossible to see if any

indicators of residential use were present. In any case, now that the notice has been complied with, all that means is that, if the appellant were to bring another caravan onto the land for residential purposes, she would be in breach of the terms of the enforcement notice. She has stated no desire to live on the land, so a decision to uphold the enforcement notice would not be to her disadvantage. The enforcement notice would not prevent her from bringing a caravan onto the land for purposes ancillary to the agricultural use of the land, since that would not represent a breach of planning control.

10. With those matters in mind, I consider that the appellant has not discharged the burden of proof and that the enforcement notice should be upheld, thereby preventing the use of the land for the siting of a caravan used for residential purposes. I conclude that the appeal should fail.

Appeal B - Ground (f)

11. The enforcement notice has been complied with except for the removal of the hardstanding. In effect, therefore, the appeal is made on the basis that the requirement to remove the hardstanding exceeds what is necessary to remedy the breach of planning control, or the injury to amenity as the case may be.

12. The hardstanding area has little visual impact as the hardcore has become covered in mud and grass has grown in places. Its visual impact is probably less severe than if vehicles and trailers had been driven over the ground (which would not amount to development within the meaning of s55 of the Act) churning it up into a muddy mess. If the Council's intention had been to remedy the injury to amenity, compliance with the other aspects of the enforcement notice has achieved that and nothing further of any significant benefit would be achieved by requiring the now-buried hardcore to be removed.

13. Furthermore, it is likely that the hardstanding areas would be permitted by virtue of Class B (d) and (e) of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). However, the appellant has not confirmed that the land is part of an agricultural holding or that she farms the land for the purposes of a trade or business, which are prerequisites of the GPDO permission.

14. Whilst I am unable to conclude with certainty that the requirement to remove the hardstanding exceeds what is necessary to remedy the breach of control, I shall allow the appeal on the basis that the Council has not confirmed the purpose of the enforcement action and that this requirement exceeds what is necessary to overcome the injury to amenity. I shall therefore vary the notice to delete the requirement to remove the hardstanding. Otherwise the enforcement notice is upheld. I conclude that the appeal should succeed to that extent.

David C Pinner

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 2 March 2015

by David C Pinner BSc (Hons) DipTP MRTPI

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

Decision date: 5 March 2015

Appeal Ref: APP/B2355/C/14/2226924 and 2226925
Bob's Car Hire, Shawclough/Springvale Works, Shawclough Road, Rossendale BB4 9JZ

- 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 Richard Barker and Mrs Georgina Anne Ayres against an enforcement notice issued by Rossendale Borough Council.
- The notice was issued on 9 September 2014.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the siting of a prefabricated bungalow on the land, which is designated as countryside.
- The requirements of the notice are to remove the whole of the prefabricated bungalow 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)(b) and (c) of the Town and Country Planning Act 1990 as amended.
- Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The enforcement notice is quashed.

Preliminary matters

2. The reference at the end of the allegation to the land being designated as countryside is not appropriate for inclusion in the allegation but may form part of the reasons for serving the notice. If I had not been quashing the notice I would have corrected it to delete that reference.

3. The description of the development as "siting" of a prefabricated bungalow ought to be a reference to construction of the bungalow, given that the Council has referred to a four-year enforcement period, which applies to operational development. Their case is predicated on the assumption that the structure is a building for the purposes of the Act. "Siting" is not a word that implies any operational development within the meaning of s55 of the Act. Nevertheless, this is a matter I could have corrected without causing injustice if I had not been quashing the enforcement notice for other reasons.

Ground (b)

4. The appeal on this ground is made on the basis that the matters alleged have not taken place as a matter of fact. The structure at which the notice is aimed is clearly present on the land, but the appellant claims that it has not been

correctly described in the notice because it is not a prefabricated bungalow, it is a twin-unit caravan.

5. The definition of a twin-unit caravan is provided in s13 of the Caravan Sites Act, 1968. It is a structure designed or adapted for human habitation which is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices. It must be physically capable of being moved, when assembled, by road from one place to another, either by being towed or transported on a motor vehicle or trailer. S13(2) prescribes size limits when assembled of 60 feet in length, 20 feet in width and internal height from floor to ceiling of 10 feet.

6. I saw that the structure is indeed a twin-unit caravan, with each half comprising a separate unit with a chassis and wheels. At present, the two halves are not fastened together and are simply propped up on loose stacks of stones and blocks. It appeared to me that the two units had been designed at the outset to comply with the definition of a twin-unit caravan and I have no reason to doubt that, once assembled, the caravan would comply with the relevant dimensions and would be capable of being moved on a road. This could be a theoretical concept - it does not have to be capable of being lawfully moved on a public road or highway and the absence of a suitable road to move it on (as in the appeal case) does not mean that it would not be capable of being moved on a road if such a road existed.

7. The Courts have held (e.g. *Measor v SSETR and Tunbridge Wells BC [1999] JPL 182*) that the definition of "a building" for development control purposes is well settled. A mobile caravan would not generally satisfy that definition, having regard to factors of permanence and attachment; and, it would be contrary to authority, and to the purpose of the 1990 Act, to hold that, because caravans were defined as "structures" in the 1960 Caravan Sites Act, they all fell within the definition of "building" in the 1990 Act.

8. It is crucial to the enforcement action to recognise that the structure is a caravan and not a pre-fabricated bungalow because different considerations apply, including the immunity period for enforcement action, which would be 10 years, rather than 4 years for operational development. The caravan does not represent operational development and appears simply to be stored on the land. Whether or not the storage of the caravan on the land amounts to a breach of planning control depends on whether the use of the land for that purpose amounts to a material change in its use. There is caravan storage on adjoining land, which may or may not be part of the same planning unit and the use of that land for caravan storage may or may not be a lawful use. I do not have that information available and, in any case, those are matters which the appellant would no doubt wish to address if the Council chose to issue an enforcement notice alleging a material change of use of the land to use for storage of the twin-unit caravan. That being so, the current enforcement notice is incapable of being corrected without causing injustice.

9. It is therefore my conclusion that the matters alleged in the notice, namely the "siting" (or construction) of a pre-fabricated bungalow have not occurred as a matter of fact. The appeal therefore succeeds and the enforcement notice should be quashed.

10. Nevertheless, the Council is not precluded from issuing a further enforcement notice relating to the use of the land for the storage of a twin-unit caravan if they consider that such use represents a breach of planning control.

David C Pinner

Inspector