



## Appeal Decisions

Site visit made on 3 April 2018

**by V F Ammoun BSc DipTP MRTPI FRGS**

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

**Decision date: 11 July 2018**

### **Two appeals relating to land on the South East side of Canterbury Road, Sarre, Birchington, Kent**

- The appeals are made under section 174 and 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Patricia Clare Taylor as the Executor of John Baes (Deceased) against an enforcement notice issued by Thanet District Council and against a refusal of planning permission by that Council.

#### **Appeal A - Ref: APP/Z2260/W/17/3169305 – the planning application**

- The application Ref F/TH/15/1181, dated 13/11/2015, was refused by notice dated 11 August 2016.
- The development proposed is *Retrospective application for the temporary use of land for a period of three years for the siting of two mobile homes.*

#### **Appeal B - Ref: APP/Z2260/C/17/3171975 – the enforcement notice**

- The enforcement notice was issued on 18/01/2017.
- The breach of planning control as alleged in the notice is *Without planning permission, the change of use of the land for the siting of 2No. mobile homes for residential use.*
- The requirements of the notice are *Remove from (sic) the 2No; unauthorised mobile homes from the land.*
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) 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 have lapsed.

### **Summary of Decisions**

1. Temporary planning permission is granted, and the enforcement notice is varied, amended and upheld, as set out in the Formal Decisions.

### **Application for costs**

2. An application for a full award of costs was made by Ms Patricia Clare Taylor the Executor of John Baes (Deceased) against Thanet District Council. This application is the subject of a separate Decision.

### **Preliminary and policy matters**

3. The two appeals relate to the same development, as the mobile homes for which temporary planning permission is sought are those against which the enforcement notice is directed. Because the necessary fee was not paid, there is no deemed planning application to retain the mobile homes in respect of the

enforcement notice appeal. The planning merits of the mobile homes will, however, be considered in relation to the planning application appeal. The development applied for was *the temporary<sup>1</sup> use of land for a period of three years for the siting of two mobile homes.*

4. Neither party has referred to mistypings of the notice requirements, an additional "from" and punctuation. To correct them would not involve harm to either party and I shall do so. The planning application described the site as Land at Brambles Cottage (formerly The Bakery), the Council decision letter refers to Brambles Cottage, but the Appellant's evidence refers to the Old Piggery. Taking into account that there is no dispute as to what site is referred to and shown in the relevant plans, I shall use the more general description set out in the enforcement notice.
5. The appeal site is situated to the north east of the main part of Sarre. It is together with adjoining land and buildings historically associated with Sarre Windmill. This area is outside the Sarre settlement boundary as defined in the Thanet Local Plan 2006 (LP), and this is consistent with and may reflect a small but significant gap evident on both the A28 and A253 frontages between the Windmill associated buildings<sup>2</sup> and the LP boundary. As a result the site is to be treated under LP policies<sup>3</sup> as within the countryside.
6. One of the mobile homes was placed on the site for the now deceased previous owner of the land while works on a nearby building were taking place, the second is stated to have been brought onto the land for family members when the previous owner became unwell. The mobile homes are currently occupied by relatives of the deceased.
7. The Thanet Council acknowledges that it cannot demonstrate a five-year housing land supply. As a result development plan policies for the supply of housing are out-of-date by virtue of National Planning Policy Framework (NPPF) paragraph 49, and the fourth bullet point of NPPF paragraph 14 applies. This states in part that planning permission should be granted unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework as a whole; or specific policies in this Framework indicate development should be restricted*".<sup>4</sup>
8. I have taken into account the representations from interested parties but do not refer to them individually where they reflect the views of the Council or Appellant.

### **Appeal A – the planning application**

9. From my inspection of the site and area, and from consideration of the representations made, I have concluded that the main issues in this case are whether there would be harm to countryside protection or sustainability objectives, and if so, whether and to what extent they outweigh any benefits of the proposal.

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<sup>1</sup> The decision notice does not refer to the application having been made for a temporary three year period, nor does the officer report on the application. Similarly the appeal form states that the description of development has not changed from that set out in the application form. The copy planning application form provided for the Appellant, however, shows the contrary.

<sup>2</sup> And other buildings including the listed Tollgate Cottage fronting onto the A253.

<sup>3</sup> Policy CC1 and CC2 are relied on. A reference to policy CC5 was made in error.

<sup>4</sup> A footnote gives examples of such specific policies but none relate to the appeal site nor do the representations indicate that this proviso is relevant to the appeals.

10. Turning first to countryside considerations, the mobile homes abut existing buildings and dwellings associated with Sarre Windmill, and that group is itself closely adjoined by houses fronting onto the Ramsgate Road A253. The appeal mobile homes thus extend an existing developed cluster rather than being physically isolated in the sense of being separated from any other development. But though not isolated in that sense, Policy CC1 establishes that the mobile homes are to be considered as in the countryside. Nor is the application of this policy arbitrary having regard to the small but significant gap in development referred to. The supporting text to CC1's conclusion that within the countryside new development will not be permitted unless there is a need for the development that overrides the need to protect the countryside refers to longstanding structure plan policies to locate all but essentially rural development in the Thanet towns. The appeal site was previously open land historically associated with the Sarre Windmill group. Its position between that group and the A28 would have served to set back that development from the road at this point, as is shown on earlier maps of the group forming an approximately square compound set back from the road. Its use for siting two mobile homes involves loss of this previous undeveloped character, and thus some harm to countryside protection policy and conflict with LP policy CC1. The effect of this harm is however reduced by the present good natural screening to the A28 frontage, the naturally low profile of the mobile homes, and the application being for temporary permission. I have concluded that the harm to countryside protection objectives of policy CC1 should have only minor weight<sup>5</sup>.
11. The Council referred to policy CC2 which relates in part to the control of development within the former Wantsum Channel North Shore landscape character area, stating that therein new development will not normally be permitted, other than where it can be demonstrated that it is essential for the economic or social well-being of the area. As the appeal site is within the said landscape area, it follows that the policy applies and is breached by the appeal proposal in the absence of evidence of being essential. However for the same reasons as set out above I have concluded that policy CC2 does not add to the weight already given to the effect upon countryside protection. Nor do I consider there would be an adverse effect upon the setting of Sarre Windmill, a listed building.
12. Turning to sustainability, the appeal site is well connected by public bus services to the Thanet towns to the east and towards Canterbury to the west. Sarre itself has only a public house by way of services, but St Nicholas at Wade is better provided and is within a very short bus trip and reasonable cycling distance. I have concluded that the site has good public transport links to a range of existing local services. There would also be potential benefit to these services from additional custom. These points do not, however, imply that the LP strategy of seeking to concentrate development in the main settlements and to a limited extent in the larger villages does not deliver a greater degree of sustainability than providing houses in countryside locations, as the strategy involves a wider range of considerations than availability of public transport and additional custom. Nor is there any evidence to counter the Council's view that the proposal is likely to involve greater private motor vehicle use than would occur in more sustainable locations. It follows that I have concluded that

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<sup>5</sup> For the purposes of this appeal I rank the weight to be given to factors in descending order as substantial, considerable, moderate, or minor. This scale applies only to the present appeal and it cannot be assumed that the terms used will have the same relative meaning in other decisions or reports.

the appeal proposal involves harm to sustainability objectives. However having regard to the limited period for which permission is sought I consider that only minor weight should be attached to this objection.

13. Turning to the benefits of the proposal, it would self-evidently increase the housing stock by two units for the temporary period sought. It is stated that there is a housing shortage in the area, and the acknowledged failure to provide a five year rolling supply of housing land strongly suggests that even if this were not the case at present such a shortfall can be expected. I have concluded that the addition to the stock counts in favour of the proposal. The small scale of the housing gain and its intended limited duration, however, leads me to conclude that only minor weight should be given to this benefit.
14. In this case there is also evidence, provided in relation to the appeals on grounds (f) and (g), as to the personal circumstances of the persons occupying the appeal mobile homes. These are not disputed by the Council, and have some weight in support of the proposal. The circumstances can however only carry minor weight having regard both to their nature and gravity.
15. For the foregoing reasons I have concluded that the proposal involves minor harm to countryside protection and sustainability, and that there would be minor gains in respect of housing need and alleviating personal circumstances. Planning applications are to be determined in accordance with the development plan in the absence of relevant material considerations indicating otherwise. However for the reason set out in paragraph 6, in this case the test set by national policy is whether the adverse effects would *significantly and demonstrably outweigh* the benefits of the proposal. This is a material consideration requiring a different approach to that which would otherwise be required. In this case given the balance of factors referred to I have concluded that the adverse effects do not significantly and demonstrably outweigh the benefits, and that the appeal will therefore succeed.
16. The application was made for a three year temporary permission, and as this has been taken into account in my conclusions, it is appropriate to limit the permission accordingly. Additionally the basis upon which a decision was taken was that required by the NPPF where a Council cannot demonstrate a five year forward housing supply, a matter which will self-evidently be addressed by the development plan process and so will change over time. I shall therefore impose a condition limiting the duration of the permission to the three years sought, and requiring cessation of the use and removal of the mobile homes at the end of that period.

#### **Appeal B – the enforcement notice – appeals on grounds (f) and (g)**

17. As there is no appeal on ground (a) against the enforcement notice it follows that subject to the appeals on grounds (f) and (g) the notice will be upheld. This appears in direct conflict with my decision to grant temporary planning permission, but in fact Section 180 of the Act will ensure that the notice will not prevent compliance with the planning permission.
18. An appeal on ground (f) seeks to show that the requirements of the notice exceed what is necessary to remedy the breach of control, or as the case may be, the harm to amenity. In this case the Council seeks to remedy the breach of control by having the mobile homes removed and thus ceasing the change of use. This reflects the breach of control, and thus does not exceed what is

necessary to remedy it. It is suggested for the Appellant that it would be sufficient to cease the residential use of the mobile homes, but as pointed out by the Council this would in effect grant permission for the storage of the homes on the site, a use for which no planning application has been made. Nor is there a deemed application extant to which storage use of the mobile homes might be considered an amendment. The appeal on ground (f) fails.

19. The appeal on ground (g) claims that the four months allowed for compliance with the notice is less than is reasonably required. The Council refers to the site occupiers having had more than a year in residence already, but an Appellant is entitled to assume that an appeal may succeed. In this case the mobile homes are evidently the sole residences of their occupiers, and though four months would be more than sufficient to remove them, I consider it less than is reasonably required where moving home is required. The appeal on ground (g) succeeds, and I shall extend to a year the period for compliance with the notice.
20. I have taken into account all the other matters raised in the representations, including the possible future association of the appeal site with existing dwellinghouses in the vicinity, but do not find that they are necessary to or alter my conclusions on the main issues in these cases.

## **FORMAL DECISIONS**

### **Appeal A - Ref: APP/Z2260/W/17/3169305 – the planning application**

21. The appeal is allowed and planning permission is granted for *the temporary use of land for a period of three years for the siting of two mobile homes* at land on the South East side of Canterbury Road, Sarre, Birchington, Kent CT7 0LF in accordance with the terms of the application, Ref F/TH/15/1181, dated 13/11/2015, and the plans submitted with it, subject to the following condition:
  - 1) The use hereby permitted shall be for a limited period being the period of three years from the date of this decision. On or before the expiry of this period the use hereby permitted shall cease and all the mobile homes shall be removed from the site.

### **Appeal B - Ref: APP/Z2260/C/17/3171975 – the enforcement notice**

22. It is directed that the enforcement notice be corrected by deleting the requirement of the notice at paragraph 5 thereof and replacing it with the words *Remove the 2No.unauthorised mobile homes from the land*, and varied by altering the period for compliance at paragraph 6 thereof to twelve months. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

*V F Ammoun*  
INSPECTOR