

Case Reference No: EC19/0020

Site Address: Land adjacent to Castle Hill, Newport, Pembrokeshire SA42 0QE

Breach of Planning Control: The material change of use of land for agriculture to a mixed use for agriculture and residential, by the siting and use of two caravans to provide living accommodation.

Background

An Enforcement Notice was issued by this Authority on 15th July 2019 relating to the material change of use of land from agriculture to a mixed use for agriculture and residential by the siting and use of two caravans to provide living accommodation and the storage of a camper van.

An appeal was made against the serving of the Enforcement Notice but this was dismissed by the Planning Inspectorate in their decision dated 4th December 2019. Following the appellant's unsuccessful appeal against the Enforcement Notice they then proceeded to seek to judicially review the Planning Inspectors decision in the High Court but permission was refused by the High Court on 21st January 2020.

The Enforcement Notice was not complied with within the period specified on the Notice and Members may recall that matters relating to its non-compliance were reported to the Development Management Committee of this Authority on 2nd September 2020. At that meeting, Members resolved that authorisation be given to instruct Solicitors to commence prosecution proceedings in the Magistrates Court for non-compliance with the Enforcement Notice if the caravan had not been removed by the end of September 2020.

Following the resolution of the Development Management Committee, an email was received from the recipient of the Enforcement Notice on 29th September 2020 informing this authority that as the agricultural season was now at an end, the caravans had been removed from her land. Officers responded informing that a site visit would be necessary to confirm compliance with the Enforcement Notice and that a site visit would be carried out accordingly.

A site inspection was carried out by National Park officers in October 2020 and it was evident that although one of the caravans had been removed completely off the land affected by the Enforcement Notice, the Enforcement Notice had not been complied with in its entirety as another caravan had been relocated within an adjoining field which was still located on land encompassed by the Enforcement Notice.

One of the fields affected by the Enforcement Notice and where one of the caravans had been re-sited was claimed to be in new ownership having been bought by an adjoining landowner. A land registry search has been carried out and while the land is still registered with the recipient of the Enforcement Notice, there is some reference that an application is pending although no further information is currently available as it is yet to be completed. The 'new' owner of the field was informed of the 'live' Enforcement Notice and was advised to remove the caravan so as to comply with the Enforcement Notice. Communication was received in February 2021 from the 'new'

owner of the adjoining field that the caravan had been removed although no further evidence was received to support this at the time.

Complaints continued to be received from members of the public regarding the siting of caravans on the land and that all the caravans had since been re-sited within the land affected by the Enforcement Notice. A site visit was carried out by National Park Officers on 12th March 2021 whereupon it was evident that a total of three caravans were located on the land affected by the Enforcement Notice. Although two of the caravans did not appear to be occupied at the time of inspection, they did contain domestic items that included duvets, pillows, tent, clothing, clothes hangers etc. and did not appear to be used for agricultural purposes. The third caravan appeared to be used for human habitation and a dog was visible inside at the time of the site visit although no person was present on the land. Following this site visit, National Park officers wrote to the recipient of the Enforcement Notice reminding her of the Enforcement Notice which remains in force and suggesting that it was questionable as to whether the Enforcement Notice had been complied with in the first instance.

The landowner has re-asserted her claim that her use of the land for the siting of the caravans is an agricultural use in accordance with 'permitted development' rights under Part 5 of the Town and Country Planning (General Permitted Development) Order 1995. Whether her use did accord with permitted development rights was considered by the Inspector on appeal against the Enforcement Notice and it was concluded that her use was not in accordance with permitted development rights. Furthermore, the landowner has not provided any new or further information to enable a different view to be taken.

Officers have advised her in writing that if it is her case that she has the benefit of agricultural 'permitted development' rights then the onus is on her to provide evidence to that effect – she had the opportunity to do that when appealing the Enforcement Notice and failed to do so, and she has also had the further opportunity to submit evidence and a Certificate of Lawfulness application in respect of any future use once she had complied with the Enforcement Notice.

Although a request was made by her to attend a meeting at the National Park offices to discuss the matter in person, the offices have continued to be closed to members of the public during the on-going pandemic and site meetings by National Park officers have been restricted until recently. In any case, officers have continued to be available by telephone or email. Officers have also reminded her that whilst it is not disputed that she may be entitled to use the land for the purposes that are compliant with permitted development rights, there is nothing to suggest that the scale of agricultural activity on the land is such that it would justify more than one caravan for agricultural purposes. No evidence has been provided by her that she is employed in farming operations on that same land or that any of the activities being carried out on the land warrant the siting of three caravans. It is for this reason that if she felt that she benefited from permitted development rights, she has been advised by officers to submit a Certificate of Lawfulness which would provide her with a formal, binding determination on any proposed use of the land as opposed to any informal discussions with the Authority which would not be binding. No application has been received nor has any other information as to the current activities on the land to support a claim under the GPDO.

The Enforcement Notice remains extant and at the time of writing this report officers consider that the siting of the caravans are in breach of the Enforcement Notice.

Officers have written to the landowner advising that the matter will be reported to the Development Management Committee seeking its authority to proceed with prosecution proceedings concerning the siting of the caravans in breach of the Enforcement Notice. Any response received will be reported to the committee.

Planning History

NP/08/107 - Change of use to natural burial site to include associate parking, turning and storage barn. **Withdrawn**

NP/15/0310/FUL - One Planet Development including one dwelling. **Refused 17th March 2016 and Appeal Dismissed 1st February 2017**

NP/18/0134/FUL - One Planet Development for Eco-smallholding including one dwelling. **Refused 18th July 2018 and Appeal Dismissed 15th May 2019**

Conclusion

The siting of the caravans by the owner of the land are in breach of the Enforcement Notice which remains extant and as a result a criminal offence is committed under section 179(2) of the Town and Country Planning Act 1990. Alternatively after the end of the time period for compliance with the Enforcement Notice, steps required by the Enforcement Notice and activities required by the Enforcement Notice to cease are being carried on by the by the owner of the land in breach of the Enforcement Notice and as a result a criminal offence is committed under section 179(1). Prosecution as a means of remedying this breach of planning control and its harmful impact is therefore required.

Legal Implications (to include Human Rights Implications)

As the development has been used for human habitation it is necessary for the Authority to consider the rights of the occupier(s) under the Human Rights Act 1998 and in particular the rights under the First protocol including Article 1 which protects rights to enjoy peacefully and Article 8 to the respect for private and family life, home and correspondence .

In this case the continued siting of the caravans has been held to be unlawful following a legal process and the exercise by the occupier of their right of appeal. Complaints have been received from members of the public. Ample time has been given to enable compliance with the Enforcement Notice. In the circumstances, the commencement of criminal proceedings is a proportionate and necessary response in a democratic society in the interests of the planning control of the use of land and the protection and preservation of the special qualities that have led to this location being included within a National Park. A fair balance between the owners interests as a land owner and the public interest is struck.

Equal Opportunities Implications (to include Welsh Language Issues)

None

Recommendation

That the Chief Executive/Director of Park Direction and Development Management Team Leader be authorised to instruct solicitors to commence prosecution proceedings in the Magistrates Court concerning the siting of the caravans in breach of the Enforcement Notice.