



Appeal Decision

Hearing held on 31 May 2022

Site visit made on 31 May 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/B5480/C/20/3254396

The Land known as Romford Halal Meat Company/Palmers Wholesale Butchers, Folkes Lane, Upminster RM14 1TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Simon Klein of the Romford Halal Meat Company against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice was issued on 24 April 2020.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of part of the land for residential use through the siting of eight mobile homes for residential use.
 - The requirements of the notice are:
 - i. Cease the use of the land for residential purposes; AND
 - ii. Remove all mobile homes from the land; AND
 - iii. Remove all debris and materials accumulated as a result of taking steps i. and ii. above; AND
 - iv. Restore the land to its condition which existed before the mobile homes were sited.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the allegation within section 3 of the enforcement notice (the breach of planning control alleged) and replacing it with the following: *Without planning permission the material change of use to a mixed use as an abattoir and for the stationing of eight mobile homes for residential use.*
2. Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

The Enforcement Notice

3. The notice refers to the land edged in black which includes the abattoir site and the mobile homes which are identified by numbers on the plan attached to the notice.
4. Two of the mobile homes are located close to the entrance to the site at the broadly western end of the site, with the remaining located on land close to the lairage at the broadly eastern end of the site. All the mobile homes are in close proximity to the overall operation and there is no dispute that they are occupied residentially by employees of the business.

5. Given the physical and functional relationship between the abattoir use and mobile homes, I consider that the development that has occurred is a mixed use, and the allegation should be corrected as set out in my decision above. Following discussion at the Hearing and the parties' subsequent agreement, I am satisfied that this correction can be made without causing injustice to the parties.

Preliminary Matters

6. The appellant in their submissions expressed their view that the mobile homes have the characteristics of dwellings and should be subject to the four-year time limit for enforcement action under section 171B(2) of the Act. This is an argument more pertinent to an appeal on ground (b). We discussed this during the Hearing and since the Council had the opportunity to respond to this matter, I am satisfied that they are not prejudiced by me determining the appeal as though this ground were pleaded.

The appeal on ground (b)

7. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact.
8. The appellant's case on this ground relates only to the mobile homes and is made on the basis that the mobile homes are not caravans but constitute operational development. In support of this argument, the appellant stated that the mobile homes are connected to services, are not easily moveable and have a degree of permanence.
9. The siting of a caravan is generally held to constitute a use of land and not operational development. However, where a caravan has permanent appendages, it will be a matter of fact and degree as to whether what is on site has become a building or structure. If a caravan remains mobile, then the likelihood is that a use of land is involved.
10. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968. The term 'caravan' is defined as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...'.
11. Section 336 of the Act states a 'building' 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' The main characteristics of a building as identified by the courts, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
12. From my inspection of the site, the mobile homes appear to be typical single unit static caravans.
13. I was able to look underneath some of the mobile homes and saw that they are raised off the ground with metal supports/legs and have a void beneath. Whilst the supports were resting on what appeared to be concrete blocks, it is not

uncommon for a caravan to be located on some sort of hard surface. I also observed large tow bars attached to the front of mobile homes and some had wheels visible.

14. Although there was skirting and decking around the base of some of the mobile homes, this appeared to be for aesthetic purposes. I also observed a lightweight wooden canopy attached to the side of mobile home five.
15. Whilst the skirting, decking and canopy may affect the mobility of the mobile homes, once removed, which would be relatively easy, I see no reason why it would not be possible to move the mobile homes on a vehicle or trailer.
16. The mobile homes are connected to services however, such connections could be disconnected relatively easily. While complete removal of the services would inevitably take longer, this would not be necessary for the mobile homes to be moved.
17. Since the mobile homes were not constructed on the site and could be moved relatively easily, I find, as a matter of fact and degree, the mobile homes fall within the definition of a 'caravan' and are not buildings or structures. The breach of planning control as amended has occurred as a matter of fact.

The appeal on ground (d)

18. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
19. S171B(3) applies to any breach of planning control consisting of a material change of use of land and/or buildings, except for a change of use of a building to use as a single dwelling, and it provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
20. Consequently, the material date is ten-years prior to the date of issue of the notice, namely on or before 24 April 2010. The onus of proof is therefore on the appellant to provide sufficient evidence which shows on the balance of probabilities that the use subject of the notice has taken place substantially uninterrupted for ten years, with the test being whether the Council could have taken enforcement action against the use at any time in the period.
21. It is common ground between the main parties that the use of the land as an abattoir is the previous lawful use and was still occurring at the time that the notice was issued, and that mobile homes one, seven and eight have not been on the land for the relevant period. That is not to say that a residential use of the land has not occurred for ten years or more.
22. Guidance as to what is expected in order to establish a lawful use is set out in the Planning Practice Guidance. It advises that the appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. This approach has been endorsed by the courts in the context of an appeal on ground (d).

23. The appellant's evidence consists of aerial images, two statutory declarations, gas safety certificates, summaries of occupiers, signed letters/statements and a list of the purchase date and prices of the mobile homes.
24. At the Hearing the Council stated that the aerial images do not necessarily show mobile homes and that they could be lorry trailers. Whilst I acknowledge the Council's view, given that the location of the mobile homes I observed, correspond with the aerial images, and they appear to have been stationed for some considerable time, I consider that it is more likely than not that the images show mobile homes.
25. In respect of the aerial images, mobile home two is first seen in the image dated 31/12/2006 and then in those dated 2010, 2011, 2013, 2015 and 2017. Mobile homes three and four are first seen in the image dated 31/12/2006 and then in those dated 2015, 2016, 2017 and 2018.
26. Mobile homes five and six are first seen in the image dated 27/6/2010 and then in those dated 2015, 2017 and 2018. In the statutory declaration of Caroline Palmer, it is stated that those were stationed in February and September 2008. As such and based on the images, they must have been stationed sometime between 31/12/2006 and 27/6/2010.
27. The statutory declarations are both dated 1 February 2022 and the Council does not question their status as statutory declarations. In Caroline Palmer's declaration, the daughter of a joint owner of the Romford Halal Meat Company, she stated that she has been involved in the day to day running of the business since 2003. In summary her statutory declaration sets out when the mobile homes were first stationed and states that they have been in place continuously since and have only been used as residential accommodation for staff employed by the company.
28. In the appellant's final comments, it was conceded that mobile home eight was stationed sometime between 2010 and 2014, and not in November 2009 as stated, and that the statutory declaration was incorrect in this respect.
29. It is evident through questioning and my own observations that the different numbering on plans used by the appellant, the Council and the appellant's agent, has led to confusion principally in respect of mobile homes three, four, five and six. It seems to me that this has resulted in the dates relating to the stationing of the caravans, in Caroline Palmer's statutory declaration, being the wrong way around.
30. In his statutory declaration Pawal Bujak, an employee of the company, stated that mobile homes two, three, four, five, six and eight have been in place for at least ten years and he has lived in number five since February 2010. He did not however state how the mobile homes, other than the one he lives in, have been used.
31. When asked what the gas safety records demonstrate, the appellant explained that they are required when people are occupying mobile homes and that checks are carried out every year. As pointed out by the Council's representative, they are titled landowner/homeowner gas safety record. Certificates have been provided for the mobile homes for the period from 2011-2019, with one year missing for mobile homes two three and four, and two years, although not consecutive, for mobile homes five and six.

32. From what I was told at the Hearing it is apparent that the appellant has, since the first residential mobile home was sited on the land, had the intention of providing residential mobile homes for his employees where required, and the mobile homes were not intended to be used for other purposes.
33. At my visit I could see that the mobile homes were of a reasonable age and the aerial images show that they have been in-situ for some time. Although three and four may have moved further north on the land sometime between 31/12/2006 and 27/06/2010, probably to make space to accommodate five and six, the mobile homes are sited in materially the same position. Other than this, given that their siting remains consistent, I have no reason to consider they were removed at any time, albeit that is not a determinative factor in any event since I am concerned with the use of the land identified. Importantly, it is highly likely that those mobile homes (or that number of mobile homes) have been on the land throughout the relevant period.
34. Whilst five and six are first seen in the image dated 27/6/2010 it is more likely than not, based on the statutory declarations, that they were stationed on the land prior to the material date and have remained on the land throughout the relevant period.
35. I acknowledge that there are inconsistencies in the evidence, including in both statutory declarations, discrepancies in the summaries of occupation and gaps in the gas safety records which, the appellant when questioned, was unable to explain. When asked what weight should be attributed to the evidence, given the discrepancies and inconsistencies, the appellant referred to confusion about the unit numbers and plans. He also explained that many of the employees are from abroad and that the comings and goings of employees makes producing consistent documentation difficult.
36. It seems probable based on my interrogation of the evidence, that the different numbering used has led to some of the inconsistencies and whilst errors in the statutory declarations diminishes the weight to be afforded to them, they still attract reasonably significant weight, particularly in the absence of contrary evidence.
37. It also seems plausible that the gas safety records demonstrate residential use. Although there are gaps in those records, it appears based upon answers to my questions, to be more likely a result of poor record management.
38. Additionally, whilst the summaries of occupiers are essentially a list of names and dates which are not presented in a particularly helpful way, where names and dates are given on the gas safety certificates, these tally with the corresponding summary of occupiers.
39. It appears that mobile home two was unoccupied for a period of one year between 2015 - 2016 and number six, installed in February 2008, was not occupied at the time of my visit, with some of the doors and windows boarded over. The summary of occupation states that it was last occupied in March 2019 however, the appellant told me that it had been occupied up until a few months ago but needed some refurbishment. There were also some shorter gaps in occupation of other mobile homes.
40. Evidence regarding occupation of the mobile homes beyond 2019 is limited and consists of the statutory declarations and summary of occupiers. One of the

appellant's representatives explained this was because the material was prepared some time ago. Nevertheless, it seems highly unlikely that the mobile homes were removed or were unoccupied between the Councils visit in July 2019 and the notice being issued.

41. In response to questioning about the evidence, the appellant, and Caroline Palmer, answered in a straightforward manner and I find no reason to question their credibility. Although my questioning and the evidence wasn't taken on oath, which limits the weight I can give to it, nothing has been presented that contradicts the evidence provided by the appellant and there is little that makes his version of events less than probable.
42. Whether any period during which a mobile home is not occupied breaks that continuity will be a question of fact and degree in each case. It is essentially a question of whether any break would be sufficient for the Council to identify a breach against which to take action. This assessment must be made based upon the whole mixed use, not the use or not of a single mobile home at any one time.
43. In circumstances such as the present appeal, there may be gaps in occupation, as one employee vacates and another moves in, and this might include periods where the appellant has to carry out repairs and redecoration. Assessing the evidence in this case, I find that one or two mobile homes being unoccupied for the given periods, including for the purposes of renovation, given the scale of the overall use, would not be material.
44. When viewed in totality, as a matter of fact and degree, the evidence presented indicates that on the balance of probabilities, the mixed use as an abattoir and for the stationing of mobile homes for residential purposes has occurred for a continuous period of 10 years or more, albeit not with the stationing of eight mobile homes alleged in the notice. Rather, based on the evidence before me, only the stationing of five mobile homes has, on the balance of probability, been ongoing for a continuous period of ten years or more before enforcement action was taken.
45. However, the notice is specifically directed at the stationing of eight mobile homes. It is therefore necessary to consider whether the introduction of a further three additional mobile homes, during the relevant period, constituted a material change of use. If so, then it would not have been too late for the Council to take action against the current use. In such circumstances, the stationing of five caravans would then only be lawful if that number had been stationed and occupied for residential purposes continuously for ten years or more prior to that further material change.
46. Consequently, if the introduction of mobile homes one, seven and eight, brought about a definable change in the character of the use made of the land which amounted to a material change of use, a 'new' breach of planning control would have occurred, and the 'clock' would restart.
47. If their introduction did not constitute a material change of use, then immunity can be claimed for the use subsisting at the date of issue of the enforcement notice, on the basis that the original breach took place more than ten years ago and there has been no material change of use since.

48. The main parties' views were sought, and both agreed that the introduction of three additional mobile homes would constitute a material change of use, albeit neither provided substantive explanation.
49. In any event, assessing whether there was a change to the character of the use made of the land is a matter of fact and degree for the decision-maker.
50. The site is located off a busy road in a semi-rural location, well screened from wider public views by mature planting. The mobile homes are not spread across the site and are confined to two areas. Consequently, the physical impact of the additional mobile homes on the site and its surroundings is extremely limited due to their location next to existing mobile homes and their close proximity to the overall business operation.
51. Additionally, since the mobile homes are occupied by employees of the abattoir and in some cases their families, the increased number of comings and goings and any off-site effects would be limited. This functional relationship is part of what defines the use as a mixed use. If caravans were stationed and occupied by non-employees then that in itself may constitute a material change to two separate primary uses, with a very different impact in terms of on and off-site effects.
52. In the absence of any substantive contrary explanation, I consider that the addition of three mobile homes in the circumstances of this particular site, would not have brought about a definable change in the character of the mixed use of the land. No material change of use for which planning permission would have been required therefore occurred.
53. Accordingly, since the material change of use to a mixed use as an abattoir and for the stationing of five mobile homes for residential use took place more than ten years before enforcement action was taken, and there has been no material change of use since, the appeal on ground (d) succeeds.

Conclusion

54. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
55. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not need to be considered.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Klein Romford Halal Meat Company

Caroline Palmer

Danny Simmonds RPS

Charles Biss Charles Biss Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Chris Stathers London Borough of Havering