



Appeal Decisions

Hearing Held on 12 March 2019

Site visit made on 12 March 2019

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 04 April 2019

Appeal A Ref: APP/M2325/C/18/3199156

Appeal B Ref: APP/M2325/C/18/3199158

Fylde Trout Fishery, Back Lane, Weeton With Peese, PR4 3HN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Alexander Young and Appeal B is made by Dr Suzan Bradley against an enforcement notice issued by Fylde Borough Council.
- The enforcement notice was issued on 13 February 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use as a fishing lake to a mixed use as a fishing lake and camping site.
- The requirements of the notice are a) stop using any part of the land as a camping site (whether using camping pods or tents) except insofar as such use may be authorised under planning permission 12/0247 (granted by the Council on 12 September 2012); b) remove from the land all camping pods or relocate them in accordance with the plans accompanying the decision notice in relation to planning permission 12/0247; c) stop using the building permitted under planning permission 09/0839 (granted by the Council on 16 March 2010) for any purpose other than a purpose incidental to the use of the land as a fishing lake; d) remove from the land the portable buildings shown on the plan in the approximate positions marked "Ancillary Structures".
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Appeal C Ref: APP/M2325/W/18/3197600

Fylde Trout Fishery, Back Lane, Weeton With Peese, PR4 3HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Alexander Young against the decision of Fylde Borough Council.
- The application Ref: 17/0572, dated 5 July 2017, was refused by notice dated 10 January 2018.
- The development proposed is use of the land for camping, including mobile pod accommodation for use both associated with and un-associated with the use of the existing fishery; the general use of the facilities building for use associated with the camping and fishery uses, along with ancillary facilities including office building, mobile toilet, car parking and footpaths; formation of a new fishing lake.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions.

Appeals A & B, Preliminary Matter

1. At the opening of the hearing, the appeals on ground (c) were withdrawn in respect of Appeals A & B.

Appeals A & B, The Enforcement Notice

2. Requirements 5a) and 5b) of the notice are phrased in the alternative, giving the appellants the option of complying with the terms of planning permission ref: 12/0247, granted by the Council on 12 September 2012. However, by the time of the hearing, the Council's clearly stated position was that this permission was not lawfully implemented and therefore no longer of benefit to the appellants. The Council's position, as set out in an email dated 25 February 2019 and confirmed at the hearing, was that the notice should be varied so that 5a) simply required the use as a camping site to stop and 5b) simply required the camping pods to be removed from the site.
3. Both the validity of the 2012 permission and the lawfulness of camping by persons not using the fishing lake are disputed by the parties. The appellants have made an application for a Lawful Development Certificate [LDC] to this effect (ref: 16/0533) which remains undetermined by the Council.
4. To my mind, the notice as written is not so hopelessly ambiguous as to render it a nullity. However, the Council's clearly stated position on the validity of the 2012 permission is now substantially different, such that it leaves the appellants in a position of doubt and confusion as to how they might be able to comply with the requirements of the notice, as originally written. This is a serious matter, given the legal consequences of non-compliance and I would not expect the interpretation of a planning permission to be within the remit of the Magistrates' Court. If the Council was to be correct in its assertion that the 2012 permission is no longer valid, step 5b) would still allow the relocation of the camping pods onto the permitted site but step 5a) would prevent their use. This appears to me to be both unclear and unreasonable.
5. The Council's suggested variation of 5a) and 5b) would place the appellants in a far worse position than when the notice was issued. It would result in the total cessation of camping and, were I to uphold the notice, it would deprive the appellants of the opportunity to pursue the above application for an LDC to a conclusion. The above considerations lead me to the view that the appellants would suffer injustice.
6. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

Appeals A & B, Formal Decision.

7. The enforcement notice is quashed.

Appeal C

Relevant planning history

8. The appeal site lies in flat, open countryside, near the small settlement of Greenhalgh. The site contains a long-established leisure fishing lake and, in March 2010, permission was granted to add a facilities building (ref: 09/0839) [the 2010 permission]. As indicated above, in September 2012, permission was granted for "*change of use of land for siting of 25 units of mobile "pod" accommodation along with cooking area, for use associated with fishery – (part retrospective)*" [the 2012 permission].
9. In May 2016, an appeal was dismissed (ref: APP/M2325/W/15/3140295) relating to the Council's refusal to allow "*the use of the land for camping, including mobile pod accommodation for use both associated with and un-associated with the use of the fishery; the general use of the facilities building for use associated with the camping and fishery uses, along with ancillary features*". Although the appeal was dismissed essentially on the grounds of undue noise and disturbance, the Inspector considered that, in principle, a well-run camping use would be acceptable, having regard to the policies of the then current Local Plan relating to the rural economy, tourism and the promotion of business activity.

Planning policy and main issue

10. At the hearing, the Council confirmed that the present development plan, the Fylde Council Local Plan (adopted October 2018) contains no material change in the thrust or direction of policies that would alter the above conclusion that the use is acceptable in principle. However, Policy GD7 seeks to ensure that amenity will not be harmed by neighbouring uses. This is consistent with the advice of both the National Planning Policy Framework [NPPF] and the Planning Practice Guidance [PPG].
11. Accordingly, the main issue in this case is the impact of the development on the amenities of users of this countryside location, and on the living conditions of neighbouring residents, with regard to noise and disturbance.

Site context

12. The camping pods are sited around a grassed area to the south of the fishing lake in a fairly central position within the appeal site. They are more widely spread than permitted by the 2012 permission but this appears to me of little significance as they are no nearer the southern site boundary, beyond which is Little Orchard caravan site. The nearest pod to this boundary is in the region of 90m away.
13. Mr Johnson, the proprietor of Little Orchard caravan site, indicated that he has 45 pitches, with groundwork completed to extend this to 57. Although these are touring pitches, caravans are permitted to be sited there on a seasonal basis. There is also planning permission to convert 18 existing pitches to statics. The business model for the caravan site revolves around its being a family orientated, peaceful site; it has also received awards for conservation. Further to the south of the caravan pitches are the nearest permanent dwellings, Kirby's Farm, Shorrocks Barn and three adjoining cottages, which

have a shared access from Back Lane. These are around 240m away from the nearest camping pod.

14. Although not formally designated a tranquil area, a number of representations point to the value placed on the generally undisturbed nature of the countryside here, permeated by a number of footpaths. However, reference has also been made to the background hum of the nearby M55 motorway, the operation of fishing and caravan businesses in the locality, with their attendant vehicular movements, and the presence of a long-established gun club some 200m to the north of the appeal site, which Mr Richardson, the proprietor, said operated 4 days a week, in summer up to 20.00 hrs. In this context, whilst I agree it is, for the most part, a generally quiet site, there is clearly scope for some activity to take place on the appeal site without unduly disturbing neighbouring residents or caravan occupants. However, that should not be taken to detract from the reasonable expectation of neighbourliness and particularly the avoidance of disturbance in the late evenings.
15. The appellant relies on the 2012 permission as part of the context for the present proposal. As indicated above, the parties disagree as to both the validity and the scope of that permission. The Council supplied a written counsel's opinion on the validity, but not the scope, of the permission. Mr Carter, for the appellant, addressed the issue of validity at the hearing; his written opinion related to the scope of the permission. It is not the purpose of this appeal to make a formal determination as to the lawful use of the camping pods but I have taken account of the submissions made on this matter.
16. Turning first to the validity, the Council's case is essentially based on the failure to comply with a condition precedent, condition no.4. However, the decision notice clearly refers to the development as "*part retrospective*", and this is confirmed in the Officer's Report, written prior to the decision, which indicates that 8 of the pods were in situ. Contemporary photographs and records of pod bookings provided by the appellant are consistent with this. Whilst condition no.4 is correctly worded as a condition precedent, it appears to me that it could not have been complied with, as development had commenced and the permission had been implemented¹.
17. In addition to the above point, the condition in question relates to the provision of covered and secured cycle storage. I find it hard to imagine how cycle storage was a matter that went to the heart of the permission for the camping pod use. Even if it did, such storage was, in fact, provided by the appellant in 2013, in close consultation with the Council. Given the Council's detailed knowledge of the situation, it seems somewhat irrational for the validity of the permission to be acknowledged in February 2018, when the enforcement notice was issued, and then to be questioned in February 2019, during the course of this appeal. Taking all the above points together, I lean to the view that the 2012 permission was lawfully implemented and remains extant.
18. Turning to the scope of the 2012 permission, the description of the development clearly indicates the intention that it is "*for use associated with fishery*". However, there is no condition attached to the permission limiting its use in this respect. Mr Wheatman conceded on behalf of the Council that, so long as an occupant of the pod used the fishery for part of the stay, his or her family, including children, could also share the use of the pod, whether they

¹ *Lawson Builders Ltd v SSCLG* [2015] EWCA Civ 122

fished or not. The appellant has submitted a persuasive argument that general camping would not be materially different from such a use. I am inclined to agree with this, subject to the exclusion of occupation by larger groups and of 'events', which appear to be materially different in character. However, there is no dispute that the use of the facilities building is limited by a condition on the 2010 permission to uses incidental to the fishery. As this contains the toilets and showers, it is difficult to see how non-fishery related camping could, in practice, take place without breaching this condition.

19. Having regard to the above factors, I am drawn to the view that the 2012 permission, with occupation of the pods in the manner accepted by the Council in para.18 above, forms a fallback position against which the current proposal should be assessed.

Noise and disturbance

20. Separate noise impact assessments were submitted by the appellant, by the Council and by the Johnson family. It is common ground that there is no agreed standard by which noise of the type experienced here, largely the sounds of children playing and adults socialising, should be assessed. It also seems to be agreed that it is not appropriate to use long term average measurements for such noise and that the specific character of the noise should be taken into account. The time at which the noise occurs is of prime importance, particularly later in the evening when sleep might be disturbed.
21. Mr Heyes, for the appellant, had monitored the site during use, when the camping pods were fully occupied. He had applied World Health Organisation (WHO) guidelines, on the basis that children's noise falls within 'neighbourhood noise', and found the measured levels at the boundary of the caravan site to be some 8 dB below the acceptable threshold. He had also applied Sport England guidelines applicable to artificial sports pitches, as these are characterised by people running and shouting; these also refer to WHO guidelines. His analysis was based on 1 hour periods, rather than an inappropriate longer term average. He assumed no amplified music and adherence to a management plan. On this basis, he concluded that the noise was, in the terms of the PPG, 'noticeable and not intrusive'.
22. Mr Kenyon, for the Council, had also monitored the site during its fully occupied use, coincidentally overlapping with the time period monitored by Mr Heyes. He also had no concerns with the noise identified at that time, although he suggested that this may not have been representative and that there was still the potential for problems from the intrusion of loud voices. In his view, the proposed earth bund would do little to mitigate any noise, largely as it would not intervene between the pods and a significant part of the caravan site.
23. Mr Bentley, for the Johnson family, had not monitored the site but took issue with some of Mr Heyes' analysis. He pointed out that, in a quiet area, reliance on a noise threshold might not be appropriate, in that a small increase in noise can be significant. It is the character, time and frequency of the noise that is most significant when considering neighbour noise. He concurred with Mr Bentley on the inadequacy of the proposed bund. The Johnson family also gave anecdotal examples of recent annoyance caused by singing, shouting and other such behaviour by occupants of the camping pods.

24. The Council's Environmental Protection Officer's comments, made back in January 2018, noted some complaints had been received since the previous appeal. The comments indicated there were two aspects of noise here, relating to amplified music and guests'/children's play. The former was capable of amounting to a statutory nuisance in this context and conditions were recommended to deal with these issues. I note the officer pointed out that noise travels both ways and that noise from the caravan site could also be heard at the appeal site.
25. Going back to the 2016 appeal, the Inspector referred to compelling written evidence back then from local residents and from the Council's Environmental Protection Officer of noise and disturbance. Much, but not all, of this related to large groups and 'events'. He opined that the use by fishermen would be to a degree self-regulating in terms of noise and disturbance. Whilst accepting at the hearing that non-fishing family members, including children, could occupy the pods, the Council agreed with this and envisaged some form of common interest in maintaining a reasonably quiet fishing environment. The appellant pointed out that camping and caravanning commonly co-exist on sites across the country. It seems logical that both fishing and non-fishing families occupying camping pods would equally wish their sleep to be undisturbed by unneighbourly behaviour from occupants of other pods.
26. My consideration of the specialist noise monitoring indicates no compelling evidence of undue noise disturbance. However, there is plainly the possibility of significant annoyance to neighbouring residents and visitors caused by unneighbourly behaviour arising from amplified music, the loud play of children and the late evening socialising of adults. Therefore, it is my view that, whether the use applied for can happily co-exist with its neighbours relies on whether suitable planning conditions and a management plan can be devised and enforced. The previous Inspector did not have such a plan before him and considered it unacceptably imprecise to impose a condition requiring a plan, without knowing what it would contain.
27. There has now been submitted to me a management plan, prepared in consultation between the parties. To my mind, its terms require the site operator to take all reasonable steps to ensure the site is operated in a neighbourly manner. There are control and monitoring provisions in place and draft planning conditions have been submitted to require compliance with this plan. I particularly note that no 'events' may take place, no combined bookings of more than 3 pods, no outdoor music and a noise curfew would be imposed. I am satisfied that compliance with the plan, and with the planning conditions to which I refer below, would ensure that the use would not give rise to undue noise and disturbance to nearby residents and to users of the neighbouring caravan site.

The fishing lake & bund

28. The proposed new fishing lake would be in the SE part of the site, a presently roughly grassed area close to the boundary of Little Orchard caravan site. It would not appear out of character in this area, which contains a number of such lakes.
29. Although not part of the reason for refusal, the Council now considers the lake to be a potential source of disturbance. However, that somewhat flies in the face of the acknowledged position that the use of a fishing lake is a generally

peaceful pastime. Mr Heyes accepted that a lake would not have the sound absorption qualities of the present grassland but that the difference would be 'incredibly small'. The Council has suggested planning conditions which would prohibit access to this general part of the site other than for fishing and would limit the use of the lake to fishing. This is shown on dwg.no.You/708/2178/01 Rev.C [Doc.5]. I am satisfied that the presence of the fishing lake, and its use for fishing only, would not give rise to undue noise and disturbance.

30. The proposed bund which is indicated on the submitted plans is intended to provide a means of disposal of the excavated material arising from the formation of the lake and to help mitigate the impact of noise. However, as proposed, it would only extend along part of the common boundary between the appeal site and the caravan site, seriously limiting its effectiveness in reducing noise. It would also appear a rather stark and unnatural feature in the landscape. It appears to me that the deposit of spoil could be more carefully designed to blend in with the landscape, as well as providing a degree of additional noise and visual screening between the adjacent uses. It would appear to be more effective if located closer to the site of the pods. To my mind, a draft condition requiring a scheme to be submitted for the disposal of spoil and its subsequent landscaping would suitably cover this matter.

Conclusion

31. I have taken account of the site history and of what I consider to be the fall-back position relating to the 2012 permission. It appears to me that this permission is extant and that, as indicated in para.18 above, the use of the pods is not limited solely to those who fish; it could also include their non-fishing family members. I have also taken account of the noise monitoring evidence and the other evidence relating to noise and disturbance, including the 2016 appeal decision. Having seen the draft conditions and the Management Plan, I am satisfied that the use as proposed to be operated and controlled is not so substantially different from that which I believe to be authorised and should be able to co-exist with its neighbouring uses without unacceptable harm by way of noise and disturbance. As such, there would be no undue conflict with the development plan, and particularly Policy GD7. Accordingly, the appeal succeeds.

Planning conditions

32. The parties have submitted a draft list of 17 conditions [Doc.7], to which the following comments apply. For clarity, conditions 1, 2 & 3 rightly specify the approved plans and the area in which camping is permitted and preclude permanent occupation of the units, in line with Local Plan Policy GD4. Condition no.4 would limit the use of the facilities building to use in connection with the fishery, directly contradicting what is applied for. As I have found the proposal acceptable, this is not needed.
33. Condition 7, requiring submission of a management plan, is not needed as such a plan has already been submitted [Doc.6]. Condition 9 requires the site to be operated in conformity with this plan. As I have found the use, if properly managed, to be acceptable, I see no need for condition 8, which seeks a noise mitigation scheme. To some extent, this is covered by condition 6, regarding the disposal of spoil and its landscaping, which should have the effect of mitigating noise. In any event, the draft condition gives no indication as to the level of mitigation sought by the Council. I do not see the need for condition

10 as use of fires is not itself inherently noisy and the management plan seeks to control noise after 22.30 hours.

34. Condition 13 properly seeks to control mud on surrounding roads during the construction period. Conditions 14 – 17 rightly seek to ensure compliance with the flood risk assessment and to ensure the site is drained in a suitable, sustainable manner.

Formal Decision, Appeal C

35. The appeal is allowed and planning permission is granted for use of the land for camping, including mobile pod accommodation for use both associated with and un-associated with the use of the existing fishery; the general use of the facilities building for use associated with the camping and fishery uses, along with ancillary facilities including office building, mobile toilet, car parking and footpaths; formation of a new fishing lake at Fylde Trout Fishery, Back Lane, Weeton With Peese, PR4 3HN in accordance with the terms of the application, Ref: 17/0572, dated 5 July 2017, and the plans submitted with it, subject to the conditions, set out below:-

- (1). This consent relates to the following plans and/or reports:

- Location plan - drawing no. YOU.708.2178/02
- Site plan - drawing no. YOU.708.2178/01 Amendment B.
- Cross Section Information Elevations of Existing Pods - drawing no. YOU/708/2178/03
- GHA supporting statement - June 2017
- Stanley Village Farm Camping - Camping Management Plan of 19 March 2019.

- (2). The use of the site for camping hereby approved shall be limited to the area annotated as camping pods as detailed on drawing number You/708/2178/01 Amendment B. Overnight stays shall only be undertaken within the 25 camping 'pods' within this area. No additional forms of camping in the form of tents, caravans, caravettes or any other form of motorhome will be allowed

- (3). No 'pods' or other building/structure on the site shall be occupied as a person's permanent, sole or main place of residence.

- (4). Prior to any works connected to the commencement of the construction of the fishing lake hereby approved and notwithstanding any details shown on the approved plans, a hard and soft landscaping scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for surface finishes of all new hardstanding areas and ensure retention of all trees and hedgerows on the site as well as the type, species, siting, planting distances and the programme of planting of trees, hedges and shrubs for additional landscaping within the development.

The approved landscaping scheme shall be implemented in accordance with a timetable to be agreed in writing with the Local Planning Authority but which in any event shall be undertaken no later than the next available planting season.

- (5). Notwithstanding the details of the approved drawings, this approval notice does not grant consent for the 5 metre wide bund located to the southern boundary of the site as detailed on drawing number You/708/2178/01 Amendment B. Instead, prior to construction of the additional lake hereby approved, a scheme

detailing how spoil from the excavated lake will be disposed of shall be submitted to and approved in writing by the Local Planning Authority. If being disposed of on site, the scheme shall detail changes to ground levels and landscaping thereof. Construction of the lake shall be undertaken in accordance with the approved scheme.

(6). The development hereby approved shall be managed in strict accordance with the submitted Stanley Villa Farm Camping - Camping Management Plan of 19 March 2019 (CMP), or any revision of the CMP subsequently agreed in writing by the Local Planning Authority.

(7). Notwithstanding the approved drawings or provisions of the General Permitted Development Order 2015, the lake hereby approved shall be used as a fishing lake only.

(8). There shall be no public access to the land located south of the camping pods and hatched brown on drawing titled 'Public Access Restriction' You/708/2178/01 Amendment C, other than for the purposes of access to the fishing lake.

(9). Prior to commencement of any works on the site for the excavation of the fishing lake, wheel wash facilities shall be provided within the site which will be used to clean the wheels of vehicles before leaving the site and a street cleaning vehicle shall be employed when required to clear surrounding roads from mud and debris resultant from works on the site. The wheel wash facilities shall be available for use throughout the construction period.

(10). The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (November 2017, Ref 17050-FRA, Rutter Johnson) and the following mitigation measures detailed within the FRA:

1. Limiting the surface water run-off generated by the critical storm events (sec 4.4, paragraph 12) so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
2. Provision of compensatory flood storage, (new pond No 3).
3. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven (sec 4.4, paragraph 19)
4. Finished floor levels are set no lower than 150mm above Ordnance Datum (AOD).

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the lead local flood authority.

(11). The development permitted by the planning permission shall be implemented in accordance with the sustainable drainage scheme for the site contained within the Flood Risk Assessment (November 2017, Ref 17050-FRA, Rutter Johnson). The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

(12). Within 2 months of the date of this approval notice, a Management and Maintenance Plan for the sustainable drainage system for the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority. The Plan, as a minimum, shall include:

a) The arrangements for management and maintenance of the sustainable drainage system.

b) Means of access for maintenance and easements where applicable.

The sustainable drainage system shall be managed and maintained in accordance with the approved details.

(13). All attenuation basins and flow control devices/structures are to be constructed and operational prior to the commencement of any other development and prior to any development phase.

B.S. Rogers

Inspector

Appearances

For the appellants

Mr K.Howarth - GHA Ltd

Mr G.Hoerty - GHA Ltd

Mr M Carter of Counsel

Mr M.Heyes - Cole Jarman

Mr A Young - Appellant

Mr C Bradley - site owner

For the Council

Mr C Wheatman - CW Planning Solutions Ltd

Mr M Kenyon - Martec

Interested Persons

Mr J.Johnson - Adjoining land owner

Dr R.Johnson - Adjoining land owner

Mrs L.Johnson - Adjoining land owner

Mr C Bentley - Sharps Redmore, on behalf of Messrs Johnson

Cllr L Oades - Fylde B.C. Councillor

Cllr L.Nulty - Fylde B.C. Councillor

Mr A.Richardson - Adjoining land owner

Mr L Goodier - Resident of Greenhalgh

Documents

1. Attendance list
2. R. v Flintshire CC and Another Ex Parte Somerfield Stores Ltd [1998]
3. Bedford B.C. v SSCLG and Murzyn [2008] EWHC 2304 (Admin)
4. Lawson Builders Ltd v SSCLG and Wakefield MDC [2015] EWCA Civ 122
5. Drawing no.You/708/2178//01 Rev.C – Public Access Restriction
6. Camping Management Plan of 18 March 2019
7. Draft list of 17 planning conditions received 15 March 2019