

HAVANT BOROUGH COUNCIL - REPORT OF HEAD OF NEIGHBOURHOOD SUPPORT

File Reference: 22/00176/CMP/UNBW

Date: 2nd October 2023

Address: Land West of Copse Meadow Lodge, Copse Lane, Hayling Island, PO11 0QB ("the Land")

Breach: Within the last 10 years and without planning permission a material change of use of land to a mixed use for the stationing of caravans for residential purposes, shipping container storage business and use of a building for storage and vehicle repairs.

SITE AND BACKGROUND

The site lies in a non-urban area on the north side of Copse Lane to the west of Copse Meadow Lodge and falls within the countryside. Copse Lane is a country lane, generally without pavements, serving sporadic development on the north part of Hayling Island.

The site comprises of a building along part of the eastern boundary, which it is understood is used for vehicle repairs, a site office (i.e. portacabin) at the entrance to the site, 37 storage containers and 5 residential caravans all of which are occupied, several vehicles and other items.

The whole of the land currently falls within Flood Zone 1, but taking into account climate change the majority of the site would fall within Flood Zone 2 and 3 in the future.

A complaint was received by the Council 24th August 2022 enquiring as to the nature of the 5 caravans on site as it was believed they are being used for residential accommodation. A site visit was carried out by officers October 2022, where a breach of planning control was established in respect of a material change of use of agricultural land to that of a caravan site, and a further two breaches identified with the 37 storage containers being rented out for storage to various parties for monetary gain and the dual use of a large barn for storage and vehicle repairs.

A planning application was submitted under reference APP/22/01193 for:

"Retrospective application for siting of 37 storage containers and 5 residential caravans."

This application was subsequently withdrawn.

Breaches of Planning Control

Siting of 5 caravans for residential use

The National Planning Policy Framework (NPPF) protects agricultural land and acknowledges its economic function within the NPPF.

Section 159 of the NPPF protects against inappropriate development in areas at risk of flooding, and states they should be avoided.

Paragraphs 174-188 of the NPPF aims to conserve and enhance the natural environment.

- (a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils
- (b) Recognising the intrinsic character and beauty of the countryside, and wider benefits from natural capital and ecosystem services- including the economic and other benefits of the best and most versatile agricultural land, trees and woodland
- (c) Preventing new or existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water, noise pollution or land instability.

Storage container business

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In the LPA's opinion the change of use of the land is material and unauthorised, and therefore amounts to a breach in planning control.

Use of a building/barn for storage and vehicle repairs

As identified by officers during site visits to the land, a large barn as indicated on the map in Annex 1 below appears to be in use for both storage of building materials (B8 use) and as a vehicle repair business (B2 use). The LPA has no record of granting permission for this, and therefore no planning control on its use.

The size of the building is approximately 313 sqm. The parking requirements for Class E and B2 uses in Havant's Car Parking SPD are the same: 1 space for 45 sqm. Therefore, a level of parking for this use on the site is required, for which during the application stage insufficient information has been provided.

As confirmed by the Case Officer during the site visit for the planning application, that there is no delineation or an acceptable separation distance between the commercial storage, the vehicle repair building and the residential caravans. This is clearly undesirable providing a poor-quality environment for residents with the likelihood of an unacceptable level of noise and disturbance to residential amenity, caused by these commercial uses, contrary to Policy CS16 of the Havant Borough Local Plan (Core Strategy) (HBLPCS) and the advice in the NPPF, which positively promotes quality development.

The mixed/ composite use for B8 storage and B2 vehicle repairs is directly contravening The National Planning Policy Framework (NPPF) which protects agricultural land and acknowledges its economic function within the NPPF.

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Planning Application APP/22/01193

A retrospective planning application APP/22/01193 for the 'continued siting of 37 storage containers and 5 occupied residential caravans' was withdrawn.

Reference will be made to the relevant issues to this notice.

The majority of the containers are rented, with those identified along the western boundary, either side of the building, as non-rented. Therefore, the majority of the containers are used for commercial storage, with no information provided on how the other containers are used. More containers are located on the site, than shown on the Site Plan, submitted with the planning application

The 5 residential caravans are located within a site that is also used for commercial storage of containers, the use of a building for vehicle repairs (for which the LPA has no record of granting permission for, and therefore no planning control on its use), with evidence of building materials storage and the burning of materials taking place within and to the north of the site. These commercial uses and the close proximity to the caravans are incompatible with residential use.

It was confirmed by the Case Officer during the site visit for the planning application, that there is no delineation or an acceptable separation distance between the commercial storage, the vehicle repair building and the residential caravans. This is clearly undesirable providing a poor-quality environment for residents with the likelihood of an unacceptable level of noise and disturbance to residential amenity, caused by these commercial uses, contrary to Policy CS16 of the Havant Borough Local Plan (Core Strategy) (HBLPCS) and the advice in the NPPF, which positively promotes quality development.

The proposed development would constitute an undesirable over-intensive use of the site which would not provide satisfactory living conditions for the occupants.

Adopted policy promotes commercial development to be located within defined urban area. This commercial use does not fall within areas promoted in the NPPF 'Supporting a prosperous rural economy', as it is storage of containers not associated with the development and diversification of agricultural and other land-based rural businesses. Furthermore, the storage of containers on the site are not sensitive to their surroundings, being significantly detrimental to the character and appearance of the rural locality, contrary to Policy CS16 of the HBLPCS and the NPPF.

Since the application APP/22/01193 has been withdrawn, and has therefore no planning permission in place, and due to, amongst other reasons, the significant harm caused to this open rural location it is expedient to issue an enforcement notice to seek to secure the cessation of the identified breaches of planning control.

Reasons for Taking Enforcement Action

1. The site is at risk of tidal flooding, based on mapping from the Council's Strategic Flood Risk Assessment (2016). From the information available it has not been demonstrated that the residential use of the caravans, which are classified as highly vulnerable in the National Planning Policy Framework, would be safe from flood risk across their lifetime and that the use of the land would not increase the risk of flooding elsewhere. In the absence of adequate information, the proposal cannot pass the Sequential or Exception Tests as set out within the National Planning Policy Framework and would represent an unsustainable, inappropriate form of development in an area at future risk of flooding. This use of is, therefore, contrary to Policy CS15 of the Havant Borough Core Strategy, 2011 and the aims and objectives of the National Planning Policy Framework.
2. The site lies within a rural area, outside the defined urban boundary and the siting of the caravans, storage containers and commercial uses in the countryside are detrimental to the rural character and the visual amenity of the area. The proposal is therefore contrary to policies CS2, CS16, CS17 of the Havant Borough Local Plan (Core Strategy) 2011, policy AL2 of the Havant Borough Local Plan (Allocations) and the National Planning Policy Framework.
3. From the information available it cannot be shown that the uses can be accommodated in a manner that would not cause increased danger and inconvenience to highway users, contrary to policies DM10 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
4. From the information available it cannot be shown that an appropriate level of on-site parking can be provided for the uses contrary to Havant Borough Council Parking Supplementary Planning Document, July 2016, (Partially updated September 2019) and policies DM13 and DM14 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
5. In the absence of a suitable agreement to secure appropriate mitigation measures, the residential aspect of the development would be likely to have a significant effect on the Solent European Sites as specified in the Habitats Regulations Assessment undertaken. As such, it is contrary to Policy DM24 of the Havant Borough Local Plan (Allocations Plan), paragraph 175(a) of the NPPF and The Conservation of Habitats and Species Regulations 2017 (as amended).
6. The use of a building for vehicle repairs with evidence of building materials storage does not have planning permission. As mentioned above we have insufficient parking information, it is visually harmful in a countryside setting and creating a poor quality environmental for the caravan inhabitants.

For the aforesaid reasons, no conditions could be imposed to mitigate the harm identified above.

THE HUMAN RIGHTS ACT 1998

The Human Rights Act confers several rights, of which the following are relevant in this case.

First Protocol, Article 1: the right to peaceful enjoyment of possessions. It is necessary to balance the right to use this land as the owner wishes, against the need to protect the character and appearance in this countryside setting. The development is contrary to the Council's adopted policies and Government advice in Planning Policy Guidance Notes. The requirements of the notice are proportionate to the intended objective of local and national planning policy that expect the highest quality of design.

Article 6: Right to a fair trial: If the recipients of the notice are aggrieved by the Local Planning Authority's (LPA) decision there is the right of appeal to the Planning Inspectorate, which is an independent body. Accordingly, the decision-making process falls within the requirements of Article 6.

Article 8 sets out the basis rights for a private, family life and home. This right is a material planning consideration, which is respected, but is not guaranteed. This right must be balanced against all other material considerations when assessing this planning application to enable a planning judgement to be made.

Having regard to all material planning considerations, these override the right to a home on the site, as provided for by Article 8 of the Human Rights Act 1998.

EQUALITY ACT

Section 149 of the Equality Act 2010 imposes the following 'public sector equality duty' on public authorities (which includes local planning authorities):

"(1) – A public authority must, in the exercise of its functions, have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

The Council does not consider that its decision to take enforcement action will have any effect on persons with one or more protected characteristics as compared with individuals without those protected characteristics.

Having regard to all the circumstances of this case, it is considered that taking action to resolve the breach is proportionate, expedient and in the public interest in order to uphold the planning laws of the land and address the harm caused by the breach.

RECOMMENDATION

In consultation with the Head of Neighbourhood Support it is recommended that:

- (i) an Enforcement Notice is issued, pursuant to Section 172 of the Town and Country Planning Act 1990 in accordance with the reasons and requirements as set out above and in the draft notice attached to this report; and
- (ii) In the event of non-compliance with any part of the Enforcement Notice at (i) legal proceedings and/or direct action be authorised.

Signed Officer	 Sophie Bebee	Dated	02/10/2023
Signed Executive head of Regeneration		Dated	02/10/2023