

## PLANNING APPEAL DECISIONS

The Council has received the following appeal decisions in the last months. All decisions can be viewed in full at <https://www.fenland.gov.uk/publicaccess/> using the relevant reference number quoted.

<b>Planning Application Reference: F/YR19/0499/F</b> <b>(Appeal reference) <a href="#">APP/D0515/W/20/3244101</a></b>					
<b>Site/Proposal:</b> Erection of a eco tyre 2-bed dwelling; workshop and storage shed and siting of a timber clad caravan (part retrospective) Land North Of Bar Drove, Friday Bridge					
<b>Officer Recommendation:</b>	Refuse	<b>Decision Level:</b>	Delegated	<b>Appeal Decision:</b>	.Dismissed
<b>Main Issues:</b>					
<ul style="list-style-type: none"> <li>• The effect of the proposals on the character and appearance of the area, with particular regard to the 2014 Fenland Local Plan policies LP3, LP12 and LP16; and</li> <li>• Whether the public and personal benefits of the scheme would outweigh any harm, and conflict with policy, with particular reference to sustainability, security, biodiversity and personal circumstances</li> </ul>					
<b>Summary of Decision:</b>					
<p>Inspector found that the site was neither within nor adjacent to the village but one step away, but did not view it as isolated when applying the 'Braintree judgements'.</p> <p>An earlier appeal decision (Enforcement Appeal) was acknowledged which found that the residential element had brought about 'significant' change in character and that the caravan, driveway and fencing had a noticeable visual impact. Whilst the hedging had established and largely concealed the development the hedging was not 'necessarily permanent' and whether the development could be seen or not the Inspector found that the residential use had altered its previous agricultural character.</p> <p>The Inspector considered the starting point to be whether the development complied with LP3, in this regard he considered the site outside the settlement and therefore countryside and as such development would be restricted to that which is demonstrably essential. In addition the Inspector found the scheme in conflict with LP12 in terms of relationship with the settlement, character impact and extension of linear features of settlement/resultant ribbon development.</p> <p>Site was acknowledged as enabling some access to local goods and services so was no isolated and as such the exceptions of NPPF Para 79 did not apply; however NPPF Para 131 relating to outstanding or innovative designs which promote high levels of sustainability was considered relevant and the appellants aim to a achieve a sustainable off-grid lifestyle were noted.</p> <p>It was accepted that the construction of the eco tyre house was unusual and that there were no other tyre houses in the district; as such the dwelling had the potential to promote high levels of sustainability however this would largely depend on how this was communicated. It</p>					

was noted that the construction had not been recorded nor had it been promoted, although it was acknowledged that the latter element could be secured by condition.

Notwithstanding this the Inspector raised issue with whether the house was indeed habitable, i.e. healthy and safe, noting that there was no corresponding Building Regulations (BR) approval relating to the house. Whilst generally BR are outside the scope of planning decisions they are referred to in Local Plan Policy LP14 and the Inspector felt that the appellants should have been aware of the need to comply with BR before starting work.

Based on the submission, discussion and the site visit the Inspector '*had very little information on how the tyre house would satisfy the necessary standards*'. Whilst it was implicit under NPPF Para 131 that great weight should be given to innovative designs these should meet the requirements of safety, health and welfare. As there was no evidence that the tyre house was habitable the dwelling was not assisted by NPPF Para 131, which may have outweighed LP3 and LP12. Nor was the scheme found to gain support from LP14.

Matters of security were also considered by the Inspector although he was not persuaded that an on-site presence was essential for security or that the business was as yet financially viable and as such the scheme did not comply with the test of being demonstrably essential thereby justifying its location. It was accepted that '*an on-site presence is a benefit, albeit personal rather than public*'.

With regard to biodiversity the Inspector acknowledged that whilst the '*proposals satisfy the biodiversity requirements of policies LP12, LP14 and LP16, through protection and enhancement, they gain little support from them*'.

Health benefits of residing on site were also considered by the Inspector however in order to give this matter substantial weight the Inspector considered that he would need to see more evidence that the improvements were more to do with moving onto the site rather than any other reason such as medication.

Consideration was also given to the Article 8(1) of the European Convention on Human Rights noting that dismissing the appeal would deny the Appellant's family the right to live on the site, however taking into account all material considerations the Inspector found that the legitimate aim of protecting the countryside could only be achieved by dismissing the appeal. However he concluded in this regard that '*interference with the human rights of the Appellants's family, and potentially with education, are both necessary and proportionate*'.

Inspector did not consider that the allowing the appeal might set a precedent for other undesirable development in the countryside given the particular circumstances of the case.

It was the absence of evidence that the tyre house uses a healthy and safe form of construction which resulted in the appeal being dismissed noting that the conflict with countryside policies would outweigh the benefits of sustainability, security, biodiversity and personal circumstances.

**Planning Application Reference: F/YR19/0959/PNC07**

**(Appeal reference) [APP/D0515/W/20/3244101](#)**

**Site/Proposal:** Prior Approval for change of use from light industrial (B1(c) to 6 x 2-storey dwellings (C3) (1 x 5-bed and 5 x 3-bed) at Unit 1, How Fen, New Road, Chatteris

<b>Officer Recommendation:</b>	Refuse	<b>Decision Level:</b>	Delegated	<b>Appeal Decision:</b>	Dismissed
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**Main Issues:**

- The LPA considered that the building did not benefit from permitted rights under Schedule 2, Part 3 Class PA by virtue of the building not having been *solely* in use as a B1(c) use on 19 March 2014 (the 'prescribed date' in the GPDO), with its last known sole use under B1(c) being in 2009 but with other non B1(c) uses after this time.
- The residential use of the building could result in poor living conditions by reason of the adjacent dog kennel business which may result in adverse noise impacts.

Therefore, the proposal failed to comply with Class PA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and as amended, and Paragraphs 127 and 180 of the NPPF.

**Summary of Decision:**

**Previous use**

The Inspector had regard to the Council's previous Planning Enforcement interventions and supporting evidence which led to the cessation of the unauthorised use of the building as a car repairs/workshop and residential use between around November 2013 and at the time a Planning Contravention Notice (PCN) was issued on 22 April 2015. The appellant confirmed that the car repair and residential use ceased in 2015.

The appellant had argued that 'car repairs' fall within Class B1(c) of the Use Classes Order (UCO). The Inspector clarified that for a use to fall within Class B1(c) of the UCO it must be capable of being carried out in any residential area without detriment to the amenity of the area by reason of noise, vibration, smell, fumes, soot, ash, dust or grit. The Inspector considered that the nature of the activities involved in a car repair business would likely generate noise through the use of machinery and the running of engines and would generate fumes and smoke from engine exhausts - likely to cause detriment to the amenity of any residential area. Therefore concluded it is likely that such a use would fall into use class B2 general industry rather than B1(c) light industry.

The appellant argued that because the use as a car repair business and residential use of the building were not lawful (i.e. did not benefit from planning permission), the approved use of the site should be light industrial, Class B1(c) and that the B1(c) use had not been abandoned and therefore that the building benefitted from permitted development rights under Class PA.

The Inspector concurred with the LPA that a strict interpretation of the permitted development rights needed to be applied in that; if the use of the building was not solely in use as B1(c) on 19 March 2014 (or when it was last in use), then it did not comply with the Class PA requirements and permitted development rights did not exist for the change of use

to residential.

**Dog kennels (amenity)**

The Inspector set out that as he had found that the building did not benefit from the permitted development rights set out in Part 3, Class PA of the Order there was no need to consider its compliance with the prior approval matters, as the development laid outside the scope of this Class.