
Appeal Decision

Site visit made on 3 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/Y1138/C/16/3151464

Land at Wiltown Farm, Clayhidon, Cullompton, Devon EX15 3TR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Gail Board against an enforcement notice issued by Mid Devon District Council.
 - The enforcement notice was issued on 25 April 2016.
 - The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref 10/00160/FULL granted on 20 May 2011.
 - The development to which the permission relates is a change of use of land to include caravan for residential occupation. The condition in question is No 1 which states that: *when the premises cease to be occupied by Mr A Board the use hereby permitted shall cease, and all materials and equipment brought on to the premises in connection with the use, including the caravan, associated hardstandings and on site foul drainage disposal facilities, shall be removed, and the site restored to a condition appropriate to its location in the open countryside, in accordance with a timetable to be agreed in writing by the local planning authority.* The notice alleges that the condition has not been complied with in that the use of the land for the siting of the caravan for human habitation continues.
 - The requirements of the notice are:
 - i) Cease the use of the Land for human habitation.
 - ii) Remove the caravan from the Land.
 - iii) Remove any materials and equipment brought onto the Land in connection to the residential use of the Land, including any hardstandings and on site foul drainage disposal facilities.
 - iv) Any areas of bare earth revealed by the removal of any materials or equipment should be raked and sown with grass seed mix and the site restored to a condition appropriate to its location in the open countryside.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Wiltown Farm, Clayhidon, Cullompton, Devon EX15 3TR, as shown edged and hatched black on the plan attached to the notice, for change of use of the land to include the stationing of a caravan for residential occupation subject to the following conditions:
 - 1) When the premises cease to be occupied by Mrs Gail Board the use hereby permitted shall cease and all materials and equipment brought on
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- to the premises in connection with the use, including the caravan, associated hardstandings and on-site foul drainage disposal facilities shall be removed.
- 2) This permission shall permit the siting of a residential caravan according with the definition of a caravan as set out in the Caravan Sites and Control of Development Act 1960 and the Caravans Site Act 1968 and the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006.
 - 3) The caravan on the site at the date of this decision shall only be replaced by one of the same dimensions and only after prior approval in writing by the Local Planning Authority.
 - 4) The site access to the C261 shall be maintained with a visibility splay of 43m measured 2.4m back from the edge of carriageway at the access to a point on the nearside carriageway edge to the east with all land and vegetation enclosed within the splay being reduced to a height not exceeding 600mm above the adjacent carriageway level. This visibility splay shall be maintained for that purpose at all times.

The appeal on ground (a) and the deemed planning application

Introduction and main issues

2. The planning permission (the 2011 permission) referred to in the summary details above was granted on appeal¹ (the 2011 appeal) following the Council's refusal of an application for planning permission. The appeal was determined following a hearing at which the appellant, Mr A Board, and Mrs G Clarke gave evidence. Mrs Clarke was Mr Board's partner and they married in 2013. The appellant in this case is therefore the same person who gave evidence at the hearing and is 'the partner' referred to throughout the 2011 appeal decision.
3. Later in 2013 Mr Board died. The place on the appeal site where he is buried was pointed out to me during my site inspection. Given the particular wording of condition No 1 set out in the summary details above, that planning permission for the use of the land permitted expired upon his death.
4. Mrs Board has continued living in the caravan on the site in breach of condition No 1 of the 2011 permission. Since that permission was no longer extant when the notice was issued the deemed planning application is for a new, in effect retrospective, planning permission for the same development.
5. That application must be determined in accordance with the development plan as it now stands unless material considerations indicate otherwise. In the reasons for issuing the notice the Council states that the continued use of the land for the siting of the caravan for human habitation is contrary to policy COR18 of the Mid Devon Local Development Framework Core Strategy 2026 (CS) adopted in July 2007 and policy DM31 of the Local Plan Part 3 Development Management Policies (LP) adopted in October 2013. However, this policy simply sets out the Council's approach to planning enforcement and so does not go to the principle of the acceptability or otherwise of the development. The Council also cites a conflict with the National Planning Policy Framework (the Framework) but does not say what this conflict is.

¹ APP/Y1138/A/10/2139824

6. Having regard to the reasons for the notice being issued I consider the main issues to be:
- (a) Whether or not the proposed development would comply with national and development plan policy regarding development in the open countryside; and
 - (b) The effect of the development on the character and appearance of the area which lies within the Blackdown Hills Area of Outstanding Natural Beauty (AONB).

National and development plan policy regarding development in the open countryside

7. While there are a number of dwellings in the vicinity of the appeal site, neither party has sought to argue that it lies within the defined boundaries of any settlement. It would be correct therefore in my judgement to characterise the area as open countryside.
8. Framework paragraph 55 says that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances which are then set out. CS policy COR18 is consistent with the Framework in this regard for the purposes of Framework paragraph 215.
9. In support of her appeal Mrs Board has submitted a letter from a local resident confirming the valuable (but unspecified) service she has given to a number of elderly or infirm people living in the parish over a period of some 19 years. While the Council acknowledged this when considering a planning application² which would have enabled Mrs Board to continue living at the appeal site (the 2015 application), it did not regard those as specific rural activities justifying the need to live in the open countryside.
10. The 2011 appeal Inspector took a more sympathetic view of the contribution that Mrs Clarke (as she then was) made to the local community. Nevertheless, I do not understand him to have concluded that either Mr Board or Mrs Clarke were rural workers with an essential need to live at or near to their place of work in the countryside.
11. This is the test in both CS policy COR18 and Framework paragraph 55. Mrs Board has not demonstrated an essential need to live in the countryside and, indeed has not sought to argue that she does have such a need. On that basis I must conclude that the development conflicts with CS policy COR18 and national planning policy as set out in Framework paragraph 55.

Character and appearance

12. The appeal site is accessed via a track that descends from a minor highway. The caravan itself is set down in the landscape on the side of a valley. A tree belt just beyond the roadside verge largely screens views of the caravan from higher ground, particularly when the trees are in full leaf. A timber screen of functional appearance is effective in obscuring the caravan from view when standing at the junction of the track and the highway. My reading of the 2011 appeal decision is that this was not in place at the time of that appeal. The 2011 appeal Inspector noted that only one house on the other side of the

² Ref: 15/01891/FULL

valley could potentially have views of the site and that remained the position at the time of my site view.

13. In my judgement therefore, the appeal development has an insignificant impact upon the character and appearance of the area and minimal effect on the landscape and scenic beauty of the AONB. There would therefore be no conflict with Framework paragraph 115. I note that was also the conclusion of my colleague who considered the same issue albeit in the context of other development plan policies since the Framework had not been published at that time.

Other considerations

14. I have identified a conflict with the development plan as regards CS policy COR18. The statute requires that planning applications be determined in accordance with the development plan except where material planning considerations indicate otherwise.
15. The conflict with Framework paragraph 55 is a material consideration that simply reinforces the development plan policy that is consistent with it; no additional weight therefore accrues in the planning balance to the national policy conflict. The lack of conflict with national policy in respect of the second main issue represents a neutral effect in the planning balance.
16. A further issue in the 2011 appeal was highway safety and concerns arising from the visibility at the junction of the track and the highway. Any conflict with development plan policy was overcome by the imposition of a condition requiring the provision of an appropriate visibility splay.
17. The Highway Authority gave no consultation response to the 2015 application. It seemed to me at my site inspection that there was adequate visibility in both directions. This suggests compliance with the condition imposed on the 2011 permission. The Council has requested the condition be re-imposed in the event of success on ground (a). This would meet the tests set out in the Planning Practice Guidance (PPG) since there is a need for the splay to be maintained; that is a feature of the condition proposed. Subject to this there is no highway safety objection. Again, this is a neutral effect in the planning balance.
18. The appellant puts forward a number of personal circumstances that she considers should outweigh any conflict with the development plan that is found. I shall consider each in turn.
19. The first point put forward is that if this appeal fails the appellant would be homeless. The 2011 appeal Inspector dealt with this issue at paragraphs 9 and 10 of the 2011 appeal decision.
20. In paragraph 9 he recognised that if that appeal was to fail both the appellant and his partner (Mrs Board as now is) would be homeless. At paragraph 10 he acknowledged that as the appellant and his partner were not elderly and had no young children they would be a low priority case for re-housing. In considering a personal condition at paragraph 11 he concluded that such a condition could be applied such that should the appellant and his partner permanently vacate the site, then the caravan would have to be removed (emphasis added throughout).

21. The Council's position is simply that the appellant has had plenty of time to find alternative accommodation since her husband died and she was therefore living at the site in breach of the condition.
22. While the second part of that statement is factually accurate, it does not alter the fact that the appellant would be made homeless if the notice is upheld and the requirements complied with or enforced. There is no evidence to suggest any change in circumstances since the 2011 appeal. There is nothing to suggest that the appellant would not still be a low priority case for re-housing. She has repeated evidence put before and accepted by the 2011 appeal Inspector that the cost of any alternative accommodation '...would be completely out of my reach.' I therefore give substantial weight to this personal circumstance of the appellant.
23. The second point is what she regards as perhaps an unforeseen consequence of the 2011 appeal because she was not married to Mr Board at the time. She considers that had she been the condition would have been worded differently.
24. In my view, that is speculation. However, I believe that, read fairly, the 2011 appeal decision paragraphs referenced above indicate that the 2011 appeal Inspector had it mind that the site would be both occupied by and then vacated by the couple then living there. Furthermore, the condition was tied to an event, not a date or period. There is no indication in the 2011 appeal decision of any evidence that the site would be vacated quickly and certainly no indication that Mr Board was in poor health. The inference I draw from the wording of the condition is that the 2011 appeal Inspector saw no harm in the caravan remaining on site for some considerable time. This potential effect of the 2011 appeal decision is therefore a material consideration that attracts substantial weight on the appellant's side of the planning balance.
25. Two further points are made. As already referred to above, Mr Board is buried at the appeal site. There is therefore an emotional attachment to the land for the appellant. The second is a reference to the appellant's health supported by a letter from her doctor. This expresses concern about the effect that eviction from the property would have rather than any particular health requirement for remaining resident at the site. While I appreciate the points made, I consider they carry little weight.

Planning balance

26. In my judgement the harm arising from the development plan conflict is limited. I believe that the evidence that the appellant would be made homeless if the appeal failed combined with the fact that had Mr Board not died the 2011 permission would still be extant and could have remained so for a considerable time are material considerations which, in this case, outweigh the conflict with the development plan and, to the extent that it adds anything, the Framework. I shall therefore allow the appeal.
27. In doing so I do not consider that any precedent would be set, as has been suggested, because this appeal is particularly fact-sensitive. Other planning applications and appeals would need to be judged on their own facts and merits against development plan policy at the time.
28. In coming to these views I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010.

Conditions

29. The Council has suggested four conditions in the event that planning permission is granted. I have considered each in the context of the advice in the PPG. They amount to a re-imposition of the most of the 2011 permission conditions.
30. I have already dealt with the highway condition and explained why that continues to be required. Conditions requiring any caravan on site to fall within the statutory definition and any replacement to be of the same dimensions as that now present are required to ensure the effect on the character and appearance of the area and the AONB is no greater than is now experienced. These conditions have the same wording as those imposed on the 2011 permission.
31. The appellant is happy to accept the same occupancy condition but with her as the named person. Her evidence which the Council does not dispute is that she lives alone and has no dependent children. The condition is required although I note that the wording of the condition now suggested by the Council differs slightly from that imposed on the 2011 permission.
32. In my view the inclusion of the suggested requirement to restore the site to a condition appropriate to its location in the open countryside is uncertain and therefore unenforceable as it would be a matter of subjective judgement as to whether any restoration was 'appropriate'. It therefore fails to meet one of the tests set out in the PPG. Having regard to the Council's stated reason for the condition, its main purpose is to prevent a caravan becoming a permanent feature in the AONB. That will be achieved by bringing the use to an end and ensuring that the caravan and other items are removed. It is not necessary therefore to additionally require restoration even by way of a scheme to be agreed.

Conclusion

33. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Brian Cook

Inspector



Plan

This is the plan referred to in my decision dated: **20 January 2017**

by Brian Cook BA (Hons) DipTP MRTPI

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Reference: APP/Y1138/C/16/3151464

Scale: Not to scale

