
Appeal Decisions

Hearing held on 9 May 2017

Site visit made on 9 May 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 16 June 2017

Appeal Ref: APP/U1105/C/16/3157552

Land at Milton Yard, Payhembury, Honiton EX14 3HE

- 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 by Mr P Broom against an enforcement notice issued by East Devon District Council.
- The enforcement notice, ref.13/FO752, was issued on 2 June 2016.
- The breach of planning control alleged in the notice is the carrying out of a material change of use of the land to the siting of a mobile home in the approximate position shown with a blue circle on the Plan B attached to the notice, and its use for residential purposes.
- The requirements of the notice are to:
 - i) Permanently cease the use of the Land for the siting of a mobile home for residential use,
 - ii) Permanently remove from the Land the mobile home
 - iii) Permanently remove from the land all domestic paraphernalia
 - iv) Permanently remove from the Land all material and debris associated with compliance with steps i) - iii) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal is exempt from the prescribed fees, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of decision: the appeal is dismissed and the enforcement notice is upheld with a variation, as set out in the formal decision below.

Appeal Ref: APP/U1105/W/16/3157550

Land at Milton Yard, Payhembury, Honiton EX14 3HE

- 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 P Broom and Ms J Gladstone against the decision of East Devon District Council.
- The application ref. 15/2326/FUL, dated 22 September 2015, was refused by notice dated 13 May 2016.
- The development proposed is the retention of a residential mobile home.

Summary of decision: the appeal is dismissed.

Preliminary matters

1. I note that the appellant confirmed in correspondence about the planning application that the proposal was for a *'5-year temporary planning permission for the retention of a mobile home'*, rather than as stated in the description of

the proposal on the application form '*the retention of a residential mobile home*'. This is the basis on which the Council determined the application, and I have considered it in the same way.

Background matters

2. The appeal site is of about 0.2 hectares, and lies in a rural location about 1 kilometre to the south-west of Payhembury, and about 2 kilometres to the north-west of Feniton. Access is via a track off a narrow lane running through Milton, a small hamlet in open countryside with no defined built up area boundary. To the south-west of the site are two conjoined former agricultural sheds. The mobile home that is subject of the enforcement notice stands towards the north-eastern end of the site. There are substantial timber gates set back from the road at the site access. The access track runs across the appeal site to the front of the sheds, and provides a right of way to a site where there are fishing ponds. This site is to the south and east of the appeal site, is in other ownership. Users have a right of access at all times, day and night, and the gates may not be locked.
3. In 2002 planning permission subject to conditions was granted for use of the site as a coach depot¹. One of the conditions on that permission was varied in 2005 to allow parking outside the buildings². The use as a coach depot ceased in 2007, about the time the appellant bought the site. Further variations to conditions were permitted to allow the servicing, maintenance and repair of Land Rovers and similar off-road vehicles³. This is the use that now subsists.
4. An application for planning permission for a permanent dwelling on the land – also to be associated with the vehicle servicing and repair business – was refused on 2009⁴.
5. The appellant operates a business for the service and repair of vehicles. The Milton Yard workshop is dedicated to 4X4 off-road vehicles, but he has another workshop in Ottery St Mary – about 5 mile to the south of Milton Yard – where more general motor repairs are carried out.

The appeal on ground (b)

6. In an appeal on ground (b) the burden of proof is on the appellant to show that on the balance of probabilities the alleged breach has not occurred as a matter of fact. The appellant argues that the enforcement notice plan wrongly identifies the position of the mobile home. It was reported to the Council's Development Management Committee that use of the land for residential purposes had resulted in that land no longer being available for the site's business use. The appellant suggests this had possibly led members to reach the wrong conclusions in the planning case.
7. The officers' report does indeed say that should the business need to expand in the future this would be constrained by the presence of a residential property or caravan on the site. However, this does not appear as an issue in the reasons for refusal of the application. Furthermore it appears to me that the presence of a residential caravan and associated domestic paraphernalia would quite probably limit the space available for the business use. However, the use

¹ Decision notice ref. 02/P0548, dated 27 September 2002.

² Decision notice ref. 05/1205/VAR, dated 5 August 2005..

³ Decision notice ref. 07/1747/VAR, dated 10 October 2007.

⁴ Decision notice ref. 09/0213/OUT, dated 18 May 2009

enforced against is a use of the site as a whole, and in that sense the caravan might be positioned anywhere, at the choice of the appellant.

8. It appears to me that the specific location of the caravan in terms of a few metres one way or another would have a limited effect – unless it were in a particularly inconvenient part of the site that clearly disrupted business use. However, this latter situation would be unlikely since it would be harmful to the appellant's interests.
9. The enforcement notice plan indicates the caravan to be roughly 20 metres to the west of its actual position – in a place where I saw that a number of disused vehicles were stored. It is highly unlikely that the caravan would be sited there, and the plan submitted with the planning application shows the actual position reasonably accurately. Given that the committee had that plan before them for the planning decision, it is unlikely they would have been misled.
10. In my opinion the enforcement notice plan can be varied to show the position of the caravan more accurately, and I do not consider any party would be caused significant injustice by this. I consider that on the balance of probabilities the alleged breach has occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (a), the deemed planning application and the s.78 appeal.

11. Ground (a) is that the material change of use alleged should be granted planning permission. The application for the proposed retention of the mobile home is for the identical change of use. I have therefore dealt with the s.174 appeal and the s.78 appeal together.
12. From my inspection of the site and surroundings, and all that I have heard and read I consider the main issue in these cases to be whether the siting of a mobile home for residential purposes can be regarded as sustainable development in the light of development plan and government policy.
13. Development plan policy is from the East Devon Local Plan of 2016. Policy H4 relates to dwellings for persons employed in agricultural, forestry, or rural businesses. This allows for planning permission to be granted if there is a proven and essential rural business need for the occupier of a proposed dwelling to be housed permanently in the unit for functional reasons. Where such a need is unproven or a new business is being established a temporary dwelling – such as a mobile home – may be permitted to establish that there is a genuine functional and financial need to a permanent dwelling. This policy aligns closely with the advice of paragraph 55 of the National Planning Policy Framework (NPPF), that isolated new homes in the countryside should be avoided unless there are special circumstances, including the essential need for a rural worker to live permanently at or near their place of work in the countryside.
14. Local Plan Policy TC2 requires development to be located so as to be accessible and compatible with associated land uses in order to minimise the need to travel by car.
15. The appellant argues that this is a rural business, and that the presence of the mobile home on the site promotes National Planning Policy Framework (NPPF)

aims to facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.

16. The appellant's business had originated on the Milton Yard site following the grant of the 2007 planning permission. At that time he had operated as a mobile mechanic, but had kept vehicles there. He had used the appeal site for off-road vehicle repairs for some years before he and his family moved there with their mobile home in 2013. This had happened after they had been given notice to vacate the mobile home site they had occupied for 7 years at Shute, near Axminster, some 22 kilometres away.
17. Since that move, the former agricultural buildings have been adapted to accommodate lifting gear and other equipment necessary to facilitate the specialised vehicle repair side of the business. It is the intention to dedicate the site to this more complex and time consuming repair work, which the appellant estimates constitutes about 30% of his overall business.
18. The Ottery St Mary workshop is on the Finnimore Industrial Estate. It comprises an industrial building that accommodates 7 vehicle ramps and a small office with stores above. Outside is an area enclosed by steel palisade fencing, where I saw about 7 parked vehicles. The majority of vehicles were on the site were of the modern Land Rover type. This end of the business employs 2 mechanics and an administrator.
19. On the enforcement site the southern of the two buildings is in use as a workshop. There are 3 vehicle ramps, and there is an office in a container. The northern building is used for general storage, and I understand the appellant also keeps horses there. On the open area to the front of the workshop there were about a dozen vehicles and 2 lorries belonging to the appellant, parked on both sides of the access track. There was also a trailer and a container used for storage of various components, such as engines and gear boxes. Further to the east there were several vehicles for breaking, and a number of storage containers. Beyond that is a substantial hedge enclosing the part of the site where the mobile home stands. There were also a hen coop, horse box, trampoline, garden furniture, a LPG tank, a washing line, a children's slide, and a digger, amongst other items.
20. The appellant's principal argument regards the functional need for the mobile home in order to ensure site security in this remote location, particularly at night. The vehicles, parts and specialist equipment kept there are often valuable, and attractive to would be thieves or vandals. Vehicles can be of particularly high value as a result of specialist modifications.
21. The right of way to the adjoining fishing ponds site must be kept open at all times of day and night, with the result that the gates at the site entrance cannot be kept locked, and the appeal site is effectively open to anyone. Neighbours' suspicions would not be aroused by unknown vehicles entering or leaving the site, since they might be lawfully passing across it, or could conceivably be intruders.
22. The appellant acknowledges that alarms, surveillance systems, fencing and lighting may provide a degree of security, but do not necessarily provide a quick response if an incident arises. He says that incidents of theft from the yard have been rare since it was permanently occupied.
23. Supporting text to Local Plan Policy H4 says that the Council are concerned that occupancy of dwellings associated with rural business should be restricted to

cases of essential need – as opposed to personal preferences – in the interests of limiting sporadic development in the countryside. Furthermore, concerns relating to security will not, on their own, be sufficient to justify a new dwelling. Applicants seeking planning permission will be required to submit evidence justifying the agricultural, forestry, or rural business need.

24. However, at present there is virtually no separation between the right of way and the operational parts of the yard and workshop. Although the workshop itself can be closed off, most of the vehicles parked there awaiting repair or collection stand in the open, close to the site access. It appears to me that very little has been done to improve security in the way of providing a secure compound, providing alarm systems, or lighting. Furthermore, virtually no evidence was provided to show a difference in the number of incidents occurring before and after siting and occupation of the mobile home.
25. This is not a case where full-time attendance on site is required, as might be so if, for example, animals needed emergency attention. The appellant's evidence was that the claimed growth of the business is due in part to the reduced costs of occupying this site, as compared with an urban site such as the Finnimore Industrial Estate. However, it appears to me that the appellant's move to Milton Yard was largely a matter of expediency resulting from the loss of the site in Shute, and the lower costs of using this rural site, rather than any initial need to provide security. He would in any case have been aware of the potential security problems for the several years that he owned and used Milton Yard, but did not live there. Overall, I am not satisfied that security could not be ensured by other means than siting a residential caravan.
26. The eastern part of the site is raised above the road, and is well screened from view by dense hedging. It is little visible from any other viewpoints. I accept that it causes virtually no harm in terms of the appearance of the countryside. However, there are long-standing restrictions on isolated dwellings in the countryside. I do not consider this is an instance where there is an essential need for a rural worker to live permanently at or near the place of work.
27. As I have said above, the appeal site is remote from settlements of any size, and services and facilities such as shops, schools, and health care are some distance away. Access is along a narrow and tortuous lane, and there is no public transport available nearby. Virtually all journeys to services will necessitate travel by private vehicle. Although the appellant and his partner do not need to travel to this place of work, there will be additional journeys to the other workshop in Ottery St Mary. Staff at the Milton Yard site would also be dependent upon private transport for journeys to and from work, as would customers. However, the use for specialist motor repairs and servicing has planning permission and can continue, so no additional trips are generated in that respect. Nevertheless, in transport terms, this cannot be regarded as sustainable location for a dwelling.
28. While the business itself supports economic growth in a rural area, this can carry on irrespective of the presence of the mobile home. The introduction of the mobile home does little to support a strong community in such an isolated location and cannot be regarded as socially sustainable.
29. A temporary planning permission might be suitable where a permanent presence on the site was shown to be necessary for running a business, and where there were questions about the viability of that business. It would

probably precede the establishment of a permanent dwelling if viability were demonstrated.

30. In this case there was little put forward about the viability of the appellant's business in the way of accounts or a business plan. Although the appellant says that the Council did not respond to the suggestion that a business plan should be submitted, it is very much for the appellant to put forward relevant material in support of his case. From my relatively superficial observation of the workshops, the number of vehicles in the process of attention, and the staff and equipment on both sites, the business appeared to be thriving. Granting a temporary permission would allow the continuation of an unsustainable development for several years, and in the circumstances it is difficult to understand what would be achieved.
31. I conclude on the main issue that the siting of a mobile home for residential purposes cannot be regarded as sustainable development in the light of development plan and government policy. The material change of use does not accord with the development plan, in particular the aims of Local Plan Policy H4 to control the provisions of dwellings for persons employed in rural businesses. The appeal on ground (a) therefore fails, as does the planning appeal, and I intend to refuse planning permission on the deemed application.

The appeal on ground (f)

32. This ground is that the steps required by the notice are excessive, and that lesser steps would overcome the Council's objections. In this regard the appellant argues that the requirements to remove all domestic paraphernalia, and all material and debris arising from compliance are ambiguous. This is because the appellant and his family keep animals for purposes incidental to their enjoyment and occupation of the land, including horses and poultry. These are lawful uses, and the various structures associated with them should be distinguished from those associated with the residential use.
33. It appears to me that the phrase *domestic paraphernalia* has an ordinary meaning, and includes all equipment and structures normally associated with residential occupation. At the site visit the types of items included under this umbrella were plain – and I have listed some of them previously – a trampoline, garden furniture, a LPG tank, a washing line, and a children's slide. These can readily be distinguished from, for instance, the hen coop, which is associated with a legitimate agricultural activity. While the keeping of horses is not an agricultural activity, it is one that can be carried on quite independently of residential use, and cannot reasonably be mistaken for something other. Nor can the presence of the digger be reasonably seen as associated with residential occupation.
34. Furthermore, the material and debris arising from removal of the mobile home and the domestic paraphernalia would be readily identifiable, and I do not accept that these requirements are unclear or ambiguous. The appeal on ground (f) therefore fails.

The appeal on ground (g)

35. This ground is that the compliance period stated in the notice is too short. It is argued that the need to find alternative accommodation that would allow the two young children continuity at their present school, and with reasonable proximity to Milton Yard, a longer period should be allowed.

36. While 6 months would be adequate for removal of the mobile home and other items, finding alternative accommodation may prove more time consuming. I am satisfied that there would probably be residential property available in nearby Feniton, to buy or rent, and the children could continue their schooling there. The appellant says he cannot countenance the idea of buying a property on grounds of affordability. However, he appeared to me to be a resourceful man, who runs a well organised and apparently successful business. I would be surprised if he could not find alternative accommodation for himself and his family.
37. If there were delays in finding alternative accommodation - and these delays could be properly substantiated – it would be open to the Council to extend the period for compliance under the provisions of s.173(1)(b) of the Act. I can see no good reason why they should not do so in this case. The appeal on ground (g) therefore fails.

Conclusions

38. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement notice, dismiss the planning appeal, and refuse to grant planning permission on the deemed application.

Formal decisions

Appeal Ref: APP/U1105/C/16/3157552

39. I direct that the enforcement notice is varied by

DELETION of the words '*in the approximate position shown by a blue circle on the attached plan B*' from paragraph 3 of the enforcement notice; and,

INSERTION of the words '*in the approximate position shown by a hatched black rectangle on the plan attached to this decision.*'

Subject to that variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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40. The appeal is dismissed.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Wilkinson DipTP MRTPI	Chartered Town Planner, Principal of Taylor Wilkinson Ltd Planning and Building Design.
Peter Broom	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Darren Roberts BSc(Hons) MRTPI	Principal Planning Officer East Devon District Council.
Gareth Stevenson MRTPI	Senior Planning Officer East Devon District Council.

DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the appeal, dated 4 April 2017.
- 3 Letter of representation in support of the appellant.
- 4 Application for determination as to whether a development may be liable for CIL.
- 5 Proposed planning conditions.

Plan

This is the plan referred to in my decision dated: 16 June 2017

by Stephen Brown MA DipArch(Cantab) RIBA

Land at: Milton Yard, Payhembury, Honiton EX14 3HE
Reference: APP/U1105/C/16/3157552

Scale: DO NOT SCALE

