



Appeal Decision

Site visit made on 24 July 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 03 August 2017

Appeal Ref: APP/W1850/C/17/3171269

Land at Whitehorn Farm, Witherstone Lane, Carey, Herefordshire HR2 6NG

- 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 Mr Martin Soble against an enforcement notice issued by Herefordshire Council.
- The enforcement notice was issued on 6 February 2017.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of land from agricultural to a mixed use of agricultural and to site a mobile home for residential purpose.
- The requirements of the notice are permanently remove the unauthorised caravan (as shown in the approximate location, marked 'x' on the attached plan edged in red) from the land thereby causing the cessation of its residential use on the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

The appeal on ground (f)

1. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose.
2. The purposes of an enforcement notice are set out in Section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the step specified requires the removal of the mobile home from the land thereby causing cessation of the residential use. The purpose of the notice therefore, is to remedy the breach of planning control that has occurred.
3. The planning history of the site includes planning permission Ref: DMCE/100586/F for the *retention of two existing and siting of one further mobile home to be occupied by seasonal agricultural workers*, dated 2 September 2010. The appellant suggests the lesser step of relocating the mobile home to the part of the site which benefits from this extant planning permission. To comply with the terms of the extant permission, because the maximum number of mobile homes already exists, this lesser step would necessitate the removal of one of the existing mobile homes. To require the removal of one of these mobile homes would go beyond remedying the breach because they were placed on the land in connection with a lawful use of the land.

4. The appeals on ground (f) could only succeed if the appellant's proposed lesser steps would remedy the breach of planning control. Albeit both parties acknowledge that the appellant could bring back the mobile home for seasonal worker accommodation, to allow the appeal mobile home to remain until such time as one of the other mobile homes is removed from the site would not remedy the breach of planning control.
5. Case law establishes that it is not excessive to require the removal of all items introduced to facilitate the unauthorised use as part of the requirements of the notice. Leaving the mobile home on the land would not achieve the purpose of the notice which is to remedy the breach of planning control. I therefore find that the steps required to comply with the notice are not excessive.
6. For the reasons above, I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

7. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The appellant seeks 9 months to comply with the notice, on the grounds that additional time is required to allow for the determination of a s78 appeal in relation to the re-siting of the mobile home (Ref: APP/W1850/W/17/3176744) and that the mobile home provides valuable on-site living accommodation for seasonal employees during the growing season.
8. Since the appeal site visit, I have been informed by both parties that the s78 appeal was submitted to the Planning Inspectorate outside the permitted timescale and is therefore invalid. Thus, the former argument above for extending the compliance period no longer applies.
9. I note the Council's comments to extend the period of compliance to 6 months if the mobile home is occupied. Notwithstanding the lack of information regarding the occupancy of the mobile home, a period of 6 months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between private and public interests. I therefore consider that the period for compliance should be increased to 6 months and the appeal on ground (g) should succeed.

Formal Decision

10. It is directed that the enforcement notice be varied by the deletion in paragraph 6 of the words "3 months", and the substitution therefor of the words "6 months" as the time given to comply with the requirements of the notice.
11. Subject to this variation, I dismiss the appeal and uphold the enforcement notice.

Elizabeth Jones

INSPECTOR